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1 THE COURT: Before we get started, it's always
2 helpful for me, in a nonjury trial, to give both parties an
3 opportunity to give a brief opening statement which kind of
4 summarizes their respective positions. I find it useful as I
5 follow the evidence. Mr. Murphey, what do you want to tell
6 me?

7 MR. MURPHEY: Thank you, Your Honor. First, as you
8 know from pretrial proceedings, Judge, my clients are Jon and
9 Amy Borden. They moved to Erie in August of 2002, they
10 bought a home on Wolf Road, paid \$720,000 for it. They had a
11 terrible fire on February 16, 2003. The fire started in the
12 basement, and essentially the basement exploded. It's
13 undisputed that there was catastrophic damage in the basement
14 and the areas of the home above the basement, heat and smoke
15 damage throughout the house.

16 We have a number of photographs, Judge, I won't
17 spend too much time with them, but, for example, Judge, this
18 is the basement of the house after the fire.

19 THE COURT: For the record, you'll have to
20 indicate -- are they marked as exhibits?

21 MR. MURPHEY: Yes, Your Honor. This is -- the
22 photographs are in a binder, they are Exhibit No. 1, and then
23 the photos are separately marked within that binder, and this
24 is Photo No. 61 in Exhibit 1, and that's just one of many
25 photographs that were taken showing the extreme damage to the

1 basement of the home.

2 The kitchen was one of the rooms above the basement,
3 that's just one of the photographs of the damage to the
4 kitchen and the first floor of the home. This is some --
5 another photo of the damage to the kitchen. I think Your
6 Honor's getting the flavor for the extent of the damage.
7 Very, very serious fire. This, for example, Judge, is a
8 photograph -- this is Photograph No. 68. This is the damage
9 which was in a hidden area of the house, underneath the
10 jacuzzi on the first floor of the home. You can see the
11 damage to all the piping and plumbing underneath the jacuzzi.

12 The damage extended into the den of the upstairs.
13 This is Photograph No. 36, Your Honor. There's two photos on
14 that page, as you can see. You'll see, Judge, in that upper
15 photo that is a floor that has collapsed into the basement.
16 Photograph below shows some more of the damage in the room
17 and the hole into the basement. That hole occurred in the
18 den, in the kitchen, and in various other places in the
19 house.

20 This is a photograph of the dining room area of the
21 home, this is Photograph No. 38, Your Honor. It shows the
22 damage to the ceiling of the first floor. You'll see in the
23 upper photo -- and, Your Honor, you have these exhibits, the
24 upper photo, the destruction of the ceiling of the dining
25 room on the first floor. The fire started in the basement

1 and just went up. Extremely hot fire, very smoky, went
2 through all the hidden areas of the house, all the plumbing
3 chases, the electrical chases, all the way through the house.

4 All the way, indeed, Your Honor, to the attic. I
5 have a photograph of damage which was documented by the
6 insurance company's adjuster, this is Photograph No. 23, to
7 the rafters in the attic. Looking at the photographs
8 themselves will probably do it better justice. But suffice
9 to say, the damage extended from the basement all the way to
10 the attic.

11 And, in fact, we also have a photograph of a study,
12 one of the rooms of the house that is above the garage, and
13 that room also incurred damage. So this is the study that's
14 above the garage. This is Photograph No. 64, Your Honor.
15 And you'll see how devastating the fire was. Again, that's
16 above the garage, and the fire started in the basement.

17 Now, fortunately, Jon Borden was the only person
18 home at the time of the fire. He and Amy have three
19 children, but Amy and the children were visiting family in
20 Pittsburgh. Jon was the only one home, he was able to escape
21 without injury.

22 At the time, Jon was insured by the Defendant, Amica
23 Mutual Insurance Company, under their Platinum policy, which
24 is the policy that provides the broadest coverage, it's the
25 most expensive policy you can get from Amica. It had several

1 coverages. One of the coverages is for the dwelling, and
2 that is for the amount of money that it would take to put the
3 house back into its prefire condition. There was also
4 coverage for personal contents inside the house, also
5 coverages for alternative living expenses which are made
6 necessary when somebody has to leave their house because of a
7 fire.

8 Now, as we have discussed, the Complaint in this
9 case included allegations of bad faith under at least two of
10 those three coverages, and that is the dwelling and the
11 personalty. However, at trial we are going to focus on the
12 dwelling. The Bordens recognize the significant burden of
13 proof in a bad faith case, and they believe that the clearest
14 evidence of bad faith on the part of the insurance company in
15 this case was with respect to the dwelling.

16 Again, the obligation of Amica, as they have
17 acknowledged and it's clear for this policy, is to pay
18 whatever amount is necessary to put the house back in its
19 prefire condition. And we have a burden of proof in this
20 case, we have to prove that Amica's conduct was unreasonable
21 and that they knew or had reason to know of their
22 unreasonable conduct, and we believe the evidence is going to
23 clearly prove both of those.

24 THE COURT: And by clear and convincing evidence.

25 MR. MURPHEY: That's correct. In this case, the

1 dwelling estimate was originally prepared by an independent
2 adjuster hired by Amica named John Schumann, and Mr. Schumann
3 prepared an estimate dated February 26th of 2003 --

4 THE COURT: What was the date?

5 MR. MURPHEY: February 26th of 2003. And in that
6 estimate, Your Honor, Mr. Schumann estimated the cost of
7 repairs at about \$328,000. We will offer evidence that there
8 were obvious errors and omissions in that estimate, and when
9 that was brought to Mr. Schumann's attention, he refused to
10 consider any revision, refused to consider any change to the
11 estimate. He claimed that his estimate was backed up by the
12 opinion of a local contractor who was willing to do the work
13 at that price.

14 That local contractor was a man named Brian Seifert
15 of a company called Visions. Mr. Seifert was not hired by
16 the Bordens; in fact, he was not hired by Amica. He was a
17 board-up contractor, an emergency repair guy, who showed up
18 with the volunteer firemen. Amica didn't know anything about
19 him; Mr. Schumann didn't know anything about him. And,
20 nevertheless, they relied on his opinion that this was the
21 amount of work that was necessary. That is despite the fact
22 that Mr. Seifert is not a home builder, he's not a home
23 remodeler. He's a snowplower and roofer and a
24 Jack-of-all-trades. And, in fact, he's simply not someone
25 the Bordens would have ever chosen to rebuild their house.

1 And Amica knew that and nevertheless continued to rely on
2 this gentleman's opinion.

3 And after the Bordens brought to Mr. Schumann's
4 attention the obvious errors and omissions in his estimate,
5 Schumann refused to do anything about it; Amica didn't do
6 anything about it. Schumann left Erie, and the estimate was
7 what the estimate was, and the Bordens were under the
8 impression that that was all the money they were ever going
9 to get for their dwelling.

10 Therefore, they hired a public adjuster named
11 Anthony Parise, and he reviewed the Schumann estimate and
12 found it to be willfully short. He investigated the damage,
13 investigated it very closely; you will hear Mr. Parise's
14 testimony --

15 THE COURT: Just so I keep my time line straight,
16 when will the record reflect that Mr. Parise was retained,
17 and when did he produce his estimate?

18 MR. MURPHEY: He was retained on or about March 1st
19 or 2nd of 2003, and he produced his estimate on or about
20 March 23, 2003.

21 And Mr. Parise went through the house and found that
22 Mr. Schumann had not opened up any of the walls to see if
23 there was any damage behind the walls. To see if there was
24 any smoke or soot or anything in the wiring or the plumbing
25 or any of the other hidden areas of the house. And Parise

1 concluded very quickly that the house needed to be gutted.
2 It needed to be gutted down to the frame and cleaned and
3 rebuilt. Therefore, Mr. Parise's estimate was over \$680,000,
4 which is more than twice what Mr. Schumann's estimate was.

5 THE COURT: Just so I'm clear, when you say the
6 house needed to be rebuilt, did he mean the house needed to
7 be completely torn down or would some portion of the original
8 structure remain and they would build around it?

9 MR. MURPHEY: Some portion of the original structure
10 would remain and they would build around it.

11 THE COURT: What was his figure again?

12 MR. MURPHEY: \$680,000, approximately, Your Honor.
13 And that was revised slightly to just over \$690,000 soon
14 after his original estimate, after doing some more work.

15 So they brought the fact that the Schumann estimate
16 was extraordinarily low to Amica's attention, and they still
17 didn't do anything about it. So Mr. Parise arranged a
18 meeting which would include Mr. Schumann, who was the
19 estimator; Mr. Bennett, who is the Pittsburgh regional
20 manager, who is the person from Amica who was primarily
21 responsible for the claim. And they had a meeting at the
22 house where Mr. Parise showed very clearly that
23 Mr. Schumann's estimate had missed all kinds of stuff, and
24 that the house, in order to be put back in its prefire
25 condition, in order to eliminate the soot, eliminate the

1 smoke odor, was going to have to be gutted down to its frame
2 and rebuilt.

3 Nevertheless, Amica at that point in time refused to
4 acknowledge that there was any problem with the Schumann
5 estimate, refused to revise their estimate in any way. The
6 meeting really was a sham because at noon on the day of the
7 meeting Amica broke off and called their home office and
8 received approval to not offer any more money, to not hire
9 another contractor to look at the damages, to not further
10 negotiate, but instead to demand appraisal under the
11 contract, which is a contractual dispute resolution forum for
12 property claims such as this. So they decided to do that
13 after a couple hours at the house without acknowledging that
14 there were any problems.

15 Now, following that meeting, the Bordens were very
16 upset. At the meeting, for example, the independent
17 adjuster, upon seeing some soot in the walls, suggested that
18 maybe the fire hadn't caused the soot. That somehow it was
19 in the walls miraculously from some other event that no one
20 knew anything about.

21 THE COURT: When you say "independent adjuster," you
22 mean Mr. Schumann?

23 MR. MURPHEY: That's correct. Mr. Schumann, who, as
24 you know, Judge, was working on behalf of Amica.

25 So the Bordens complained to the Insurance

1 Department. They sent a letter laying out, among other
2 things, their version of what had happened at the meeting,
3 the meeting was April 15, 2003, and how offended they were,
4 and how they didn't think they were being treated fairly by
5 Amica, and they also hired an attorney because the appraisal
6 had been demanded and they didn't know what else to do.

7 THE COURT: I'm sure this will come out in the
8 testimony, but explain to me the mechanism for appraisal
9 under the policy.

10 MR. MURPHEY: Under the policy, each party is to
11 appoint an appraiser who will act as their representative on
12 the panel, and then those two appraisers will select an
13 umpire who would be the neutral. The analogy, Judge, would
14 be like an underinsured motorist arbitration, where each side
15 appoints somebody and then there's a third. And just like
16 most underinsured motorist arbitrations, it's a common law
17 proceeding with no appeal rights. It's an -- you know,
18 obviously an added expense to anybody who's involved in it.
19 And, essentially, the Bordens felt it was just an effort by
20 Amica to try to split the baby rather than to try to come to
21 a considered conclusion as to what amounts they owe.

22 So after the Bordens retained counsel, they also
23 hired a local contractor named Dave Haller. Now, early on in
24 the case, Dave Haller's name had come to the Bordens'
25 attention because he is a builder who's well-regarded

1 locally, has built a number of houses in the Wolf Road area,
2 and, in fact, remodeled many houses in the Wolf Road area.
3 He was working on one of the neighbor's houses at the time.
4 And Mr. Haller had actually worked on this very house in the
5 past; although, the Bordens didn't know that at the time.

6 And they had told Mr. Schumann they were considering
7 hiring Dave Haller or Laughlin Brothers, another local
8 contractor, early on in the proceedings. But Mr. Schumann
9 had said, now's not the time for that. I have Mr. Seifert
10 here, we'll just get some emergency repairs done, and at a
11 later time we can decide who's going to rebuild your house.

12 But at any rate, at this point, when the appraisal
13 had been demanded, the Bordens thought, we need to talk to a
14 contractor. So they talked to Mr. Haller. He went in, took
15 a look at Mr. Schumann's estimate, took a look at the house,
16 and said he found Mr. Schumann's estimate to be laughable it
17 was so low. Mr. Haller's estimate for repairing the house
18 was \$700,000. Now, of course, the house cost \$720,000. So
19 that's essentially -- it would make more sense to demolish it
20 and rebuild it.

21 However, Haller understood that the insurance
22 company's obligation, as was told to him, was to put the
23 house back in its prefire condition. His estimate was
24 \$700,000 to do that, and he's very confident that that's what
25 needed to be done. He agreed with Mr. Parise that the house

1 needed to be gutted and rebuilt. And, in fact,
2 Mr. Haller came up with an estimate slightly greater than
3 Mr. Parise's.

4 After the appraisal was demanded, Amica and the
5 Bordens got counsel -- Amica also got counsel, and that was
6 Mr. Geer. And after Amica got counsel, the appraisal then
7 suddenly went on hold and Amica agreed to get a contractor to
8 come in and take a look at it -- another contractor. They
9 didn't use Seifert or Visions, it was never explained why
10 they didn't use them. But presumably it's because everybody
11 acknowledged that Seifert doesn't have the type of
12 qualifications or experience to rebuild a house of this type.
13 So they hired a contractor named Dan Jones from Pittsburgh.

14 Mr. Jones came up and did an estimate. His estimate
15 was lower than Mr. Parise's, but much, much higher than
16 Mr. Schumann's. His estimate was more than \$200,000 more
17 than Mr. Schumann's. His estimate was \$542,000, and the date
18 of his estimate is July 28, 2003.

19 And Mr. Parise took a look at that estimate and
20 found that he thought it was low; however, he also said this
21 is much more logical, makes much more sense than the original
22 Schumann estimate, and this is something we can work with.
23 So, ultimately, there was a settlement reached in the case
24 where both sides acknowledged that the cost of repair was
25 \$553,000, which is ultimately the amount that the parties

1 settled on in the fall of 2003.

2 Now, Your Honor, the focus of the proof is what
3 changed about the damage to the house between the time that
4 Mr. Schumann originally estimated it at \$328,000, and the
5 time that Mr. Borden -- I'm sorry, Mr. Jones later estimated
6 it at \$542,000, both working for Amica. Well, nothing had
7 changed. Except for the fact that the Bordens had hired a
8 public adjuster, had complained to the Insurance Department,
9 and had hired an attorney. And that's what it took for Amica
10 to get a reasonable contractor with a reasonable estimate in
11 the case.

12 And, Your Honor, when you listen to the evidence in
13 this case, what we ask you to do is think about this: Think
14 about where the Bordens would have been if they hadn't hired
15 an adjuster, if they hadn't complained to the Insurance
16 Department, if they hadn't hired a lawyer. They would have
17 had a \$328,000 estimate and be sent on their way to rebuild
18 their house. And that would have been about \$225,000 less
19 than they ultimately settled for.

20 And our position, Your Honor, is, under the bad
21 faith statute that's the way you need to look at it. How did
22 the insurance company treat this person, and what would the
23 outcome had been had the person not fought back and hired an
24 adjuster and complained to the insurance department and hired
25 a lawyer.

1 THE COURT: Let me ask one other question. When on
2 this time line that you just told me is it your position that
3 the carrier knew or reasonably should have known, and yet
4 recklessly disregarded the fact that its estimate was too
5 low?

6 MR. MURPHEY: We believe that they should have known
7 at the time that Mr. Parise's report and estimate was
8 provided to them on or about March 23rd of 2003.

9 THE COURT: So --

10 MR. MURPHEY: I'm sorry, Your Honor, and then there
11 was -- there was that, we believe, was adequate, that they
12 should have known or that they recklessly disregarded the
13 fact that Mr. Schumann's estimate was too low. And then,
14 April 15, 2003 is the next date because that's the date they
15 toured the house.

16 And, in fact, Your Honor, on April 15th, Mr.
17 Schumann acknowledged to Amica, well, there's obviously some
18 problems with my estimate. In fact, I would raise it at
19 least \$20,000. But Amica didn't come back and offer that.
20 Amica didn't revise Schumann's estimate. In fact, Schumann's
21 estimate was never revised at any time. Instead what they
22 did was they invoked the appraisal, and it was only after
23 counsel got involved that they did what they should have
24 done, and that was get a contractor who came in and gave them
25 a reasonable estimate.

1 THE COURT: So I'm clear, though, your position
2 would be, I take it, that while Mr. Schumann's original --
3 actually, there was an estimate even before 3/28, if I
4 remember from the papers, 200-some thousand --

5 MR. MURPHEY: No. 328 was the first estimate. What
6 you're thinking of, I think, Your Honor, was the payment was
7 \$295,000 because they're allowed to hold back a percentage
8 until the repairs are done.

9 THE COURT: But in any event, it is your position
10 with respect to the first estimate of 328,000, while that
11 estimate, in your view, was way too low, and perhaps was
12 negligently way too low, that the quality of knowledge
13 possessed by Amica at that time was not sufficient to raise
14 it to the bad faith standard; is that correct?

15 MR. MURPHEY: That's right, Your Honor.

16 THE COURT: I get your point.

17 MR. MURPHEY: Thank you, Judge.

18 THE COURT: Mr. Geer.

19 MR. GEER: Thank you, Your Honor. As the Court's
20 aware, I represent Amica Mutual Insurance Company in this
21 matter, the Defendant. We do not dispute this policy
22 provided that following the fire Amica's duty to the insureds
23 was to return the place to its prefire condition assuming
24 they wanted to repair the premises. Ultimately they decided
25 not to. Ultimately they decided to tear it down. But in the

1 context of the claim, the anticipation at all times was, we
2 have to expect them to repair, and that was exactly what
3 Amica was looking for.

4 Mr. Murphey showed the Court a number of
5 photographs. Those photographs are germane to this case only
6 in one respect. Yes, there was terrible fire damage to this
7 house. The fire started in the basement and moved up from
8 there. Yes, it burned holes up above where it started.
9 That's very germane to the case because it made it very
10 difficult for Mr. Schumann, the adjuster, who was in there
11 shortly after the fire, to gain access to all the areas.

12 He did a preliminary estimate, Your Honor -- the
13 fire occurred on February 16th, and by February 26th or 27th
14 he had gotten around the building, despite very dangerous
15 conditions, and he wrote what he calls a preliminary estimate
16 and submitted it to Amica. The reason he did that was so
17 Amica could put some undisputed moneys in its insured's
18 hands.

19 THE COURT: What was his preliminary estimate?

20 MR. GEER: It was the 3 --

21 MR. MURPHEY: 328,000.

22 MR. GEER: 328 and change.

23 THE COURT: Will the evidence show that it was
24 characterized as a preliminary estimate?

25 MR. GEER: Well, certainly there's correspondence

1 sent to the Bordens to that effect, yes. That it was not a
2 final thing and that type thing.

3 But Mr. Murphey correctly represented to the Court
4 that the Bordens misunderstood the intent of Amica at that
5 time. Because what Amica did was, after receiving this
6 estimate from Mr. Schumann in late February, sent a check in
7 the amount of the actual cash value of the building. As
8 Mr. Murphey said, under the policy the policyholder is
9 entitled to actual cash value until they repair, and when
10 they repair, they're entitled to the repair cost. Therefore,
11 the check was \$295,000. The check said actual cash value,
12 but it said nothing about this is your final payment. It
13 said nothing about settling the claim. And the Bordens did
14 not understand that, and they were a little cautious or
15 suspicious of Amica's motives in sending them \$295,000 with a
16 check that says actual cash value, and so they returned the
17 check.

18 THE COURT: Just out of curiosity, maybe it's
19 neither here nor there, but as a matter of practice or
20 procedure, would it have been Amica's -- will the evidence
21 inform me on this point as to whether, in a loss like this,
22 it would have been Amica's practice or custom to send checks
23 piecemeal? In other words, the cash value first, followed by
24 the balance, which would be the replacement cost?

25 MR. GEER: Yes, Your Honor. The procedure would be

1 that if the -- first of all, Amica makes payments generally,
2 assuming the insureds are willing to accept payments, as
3 liability becomes obvious to them. So after they received
4 Schumann's estimate, Schumann's estimate said 328 or 329,000
5 was the cost of repair that he estimated when he was in their
6 after the fire, the actual cash value was \$295,000, they sent
7 the Bordens a check for \$295,000.

8 When the Borden's returned the check, Amica then
9 immediately, the same day, wrote a letter to the Bordens
10 explaining that this was an undisputed payment, that they can
11 take the money, it was not going to prejudice them in any
12 way. And I believe that letter was sent, you know, in March.
13 The day that Amica got the check back. So from approximately
14 March 25th on, the Bordens were certainly aware that these
15 moneys which had been offered were not offered under any
16 condition except that Amica said they owed them.

17 The Bordens, of course, had an obligation under the
18 policy to submit a contents inventory at some point in time,
19 but Amica had Mr. Schumann go in and look, shortly after the
20 fire, and try to make a preliminary estimate of what was
21 absolutely damaged. Now, some of the things in the basement
22 that had been burned Mr. Schumann could not tell what they
23 were or anticipate their value, but items that were partially
24 burned he was able to estimate. So on March 17th they were
25 sent a check for a little under \$40,000 for contents. That

1 was also returned.

2 In addition, and I know that none of this is in
3 dispute, but I think it's relevant to understanding how Amica
4 treated its insureds, they found the Bordens a very
5 comfortable living space in their neighborhood, they moved
6 them there, they bought them new furniture to put in, at
7 Amica's expense because the Bordens didn't want to select
8 their new furniture in a hurry.

9 THE COURT: What was the comfortable living space?
10 Was it a home?

11 MR. GEER: It was a home. It was a home. And I
12 believe Dr. Borden will testify it was very comfortable. In
13 a neighborhood very close to where they lived before.

14 They were living there, they were given a claim
15 card, the claim card -- they were given what's called a claim
16 card. This is a debit card. It had \$7,500 in credit for
17 them to pick up whatever they needed. Obviously they were
18 going to need clothing. Obviously they were going to need
19 other household items. And they were told, we'll reload the
20 claim card as you need it. So Amica attempted to do the best
21 they could for them. In addition, Mr. Schumann was sent out
22 that day, and, I think, arrived two days later driving up
23 from the east coast.

24 Your Honor, the battleground in this case, so to
25 speak, and the reason we're here, is not because of the

1 damage that Mr. Murphey showed you in his photographs. What
2 was really at issue here was a large section of the house
3 which was away from the fire damage -- I can show the Court
4 some photographs. Certainly there's bad fire damage in the
5 house, but in Mr. Schumann's estimate, he had replaced that.
6 In other words, he agreed that needed to be gutted. So we're
7 not disputing that.

8 THE COURT: In the house proper? The main part of
9 the house?

10 MR. GEER: Yes. In the basement area which was
11 burned and in the areas above that, which the fire spread to,
12 where there was holes in the floor. There was absolutely no
13 dispute that needed to be gutted and replaced. And I don't
14 think we have a dispute with his estimate that those were
15 reasonable.

16 But there was a very substantial disagreement -- I'm
17 going to show the Court some photographs, so the Court will
18 understand why there's a disagreement. Mr. Schumann is aware
19 of fire restoration technology, and a lot of this house only
20 had smoke damage -- and I don't mean to demean the smoke
21 damage. Smoke damage should be a concern to a policyholder,
22 and it was of concern to the Bordens. But as these
23 photographs indicate, Your Honor, there were areas here which
24 were not -- they were not totally destroyed.

25 THE COURT: What am I looking at?

1 MR. GEER: These are other areas of the house. For
2 instance, this is the stairway to the second level down to
3 the foyer. This is an area that was smoke damaged. For
4 instance, in this photograph, you can see the --

5 THE COURT: You should probably identify it as
6 you're going through it.

7 MR. GEER: This is Photograph 45, Your Honor. This
8 is the foyer and steps up to the second level. Here
9 Mr. Schumann will testify that the carpeting was stained by
10 smoke, and he was going to replace all the carpeting, but he
11 believed that the areas I'm pointing to, the spindles and the
12 stair rail, could be cleaned, repainted, and replaced --

13 THE COURT: Not by way --

14 MR. GEER: I'm sorry, cleaned and repaired.

15 THE COURT: This isn't by way of cutting you off.
16 You can go through and show me whatever photographs you want.
17 But is this the point that, in your opinion, the lion's
18 share, if not all, of the discrepancy between Mr. Parise's
19 estimate and Mr. Schumann's estimate involved a fundamental
20 disagreement as to whether those portions of the house that
21 only suffered smoke damage needed to be drastically torn up
22 and rebuilt, or in some less drastic fashion, cleaned?

23 MR. GEER: That is correct.

24 THE COURT: Is that essentially what you're telling
25 me?

1 MR. GEER: Essentially. The lion's share, yes.
2 That was the largest single dispute they had. We did not
3 dispute that Mr. Schumann missed things in his preliminary
4 estimate. That has never been an issue. There were things
5 he could not get to. He'll testify about the conditions that
6 he was working under when he was in that house following the
7 fire. He indisputably missed those.

8 What Amica was having issues with was not that.
9 They had already put \$340,000 in the insured's hand, and the
10 Bordens had returned the money. It was the 295 payment,
11 which was the payment on the building, and the payment on the
12 contents, which was 39,9, 40,000. So with all that money
13 placed in their hands, they didn't seem willing to accept it.
14 And even when Amica wrote to them and said this is an
15 undisputed payment, they still wouldn't take it.

16 So the Bordens set a policy as of late March that
17 they were not accepting Amica's money. They were
18 distrustful, and I'm sure we're going to hear all the
19 evidence of why they were distrustful, but -- there was some
20 misunderstanding here. But what it really came down to was,
21 many of these issues could have been resolved, but this
22 particular issue involving areas such as this, this is 59,
23 upstairs hallway, bathroom, as the Court can see, while there
24 is smoke damage, which may not be obvious from the
25 photograph, this is not an area which is obviously something

1 that needs to be totally gutted; tear out the walls, strip
2 the house down to the bare walls, and let's start
3 construction all over again. That is what Mr. Parise, their
4 public adjuster, anticipated in his estimate.

5 THE COURT: Just so I -- in order to ameliorate the
6 smoke damage problem, for instance, as reflected in that
7 exhibit -- what is it 51? Photograph 51 that's up on the
8 screen right now?

9 MR. GEER: This is 59, Your Honor. Photograph 59.

10 THE COURT: So I'm clear, what method or methodology
11 did Mr. Schumann suggest as opposed to Mr. Parise?

12 MR. GEER: I think the term that's used -- that
13 he'll use is probably clean, seal, and paint. Clean it, seal
14 it, and assuming that's successful, then you paint it. It's
15 a much less expensive -- it's a much less expensive process,
16 and both Mr. Parise and Dan Jones, the contractor who kind of
17 ultimately resolved this, can testify as to the fact that
18 that works. It doesn't always work, but it works frequently.

19 THE COURT: When you seal it, does that mean, for
20 instance, if there's smoke or soot damage behind the wall,
21 you somehow make sure you've sealed any cracks so that you
22 don't smell it, that type of thing?

23 MR. GEER: That's correct, Your Honor. The process
24 that is used -- we're not talking about scrubbing it down
25 with soap. We're talking about scrubbing it down with

1 substances which, first of all, take the dangerous particles
2 off of the walls, and then, secondly, take the odor out. And
3 there are various technologies available if that doesn't work
4 the first time.

5 We never got that far because what really happened
6 here was, Mr. Parise was absolutely determined that he wanted
7 to have all the walls gutted, and, you know, you'll hear
8 testimony that he was walking around kicking holes in walls.
9 And from the Plaintiff's perspective, he's kicking holes in
10 the walls to show insurance company representatives that
11 there's a little smoke or discoloration in the insulation.

12 But the other concern is, once you've kicked a hole
13 in the wall, then you have to replace the wall. So he's
14 walking through the rooms kicking holes in the walls. And
15 that occurred at the meeting and perhaps was one of the
16 things that's somewhat alarming because he's causing damage
17 while he's trying to demonstrate what his opinions are.

18 Mr. Murphey characterized all of this as Amica's
19 unwillingness to listen or Mr. Schumann's unwillingness to
20 change his estimate. Mr. Schumann can testify about the
21 meeting and what his feelings were when he was shown the
22 shortcomings in his estimate by Mr. Parise. But he does not
23 dispute he missed things, Your Honor.

24 The point, though, is this: There may have been
25 \$20,000 in items that were missed by Mr. Parise, and that

1 might have taken the 328, \$329,000 estimate up \$20,000;
2 however, consider that Amica has already put more money than
3 that in the Bordens' hands and they refused to take it.

4 The other thing that came into play here was, at the
5 April 15th meeting it became very obvious to Amica that this
6 bidding was a mold hazard --

7 THE COURT: Was a what?

8 MR. GEER: Was a mold hazard. Because while there
9 had been actions taken by Visions right after the fire to
10 clean up the space, pump the water out of the basement, that
11 type of thing, when this meeting occurred, it was April, and
12 we've moved now two months from the date of the fire, and
13 everyone is at the scene, no one has started repairs. I
14 mean, constructive repairs to put the building back in its
15 prefire condition.

16 And Amica wanted to do something to get the claim
17 moving. So what Amica did at this point in time was to
18 demand an appraisal. Mr. Murphey said they should have
19 brought in a second contractor. In an appraisal, under this
20 policy, the provision is very clear, it says each party shall
21 pick an impartial and qualified appraiser, they'll pick an
22 umpire, and the umpire -- after the two appraisers present
23 their numbers, the umpire shall select and set the amount,
24 which contemplates he's going to pick one or the other. I
25 guess he could --

1 THE COURT: Or something in between.

2 MR. GEER: Well, he could, but any two of them have
3 to agree. So it's not a situation where the umpire just
4 decides. So I don't agree with Mr. Murphey that this was an
5 attempt to split the baby.

6 THE COURT: So the umpire sides with one side or the
7 other?

8 MR. GEER: Yes.

9 THE COURT: So it doesn't split the baby.

10 MR. GEER: There's nothing in the policy language
11 that says that. I mean, I guess the umpire and the appraiser
12 could agree on a number, but the two of them have to agree.
13 For instance, if their number was 680 and he felt that was
14 the fairer of the two numbers, and he thinks the better
15 number is 550 and they're not willing to come down, we go to
16 court. But in reality what actually happens is, the umpire
17 and one of these other appraisers is going to agree, and that
18 contemplates that it will be resolved. That sets the
19 damages.

20 So this is not an attempt to force upon the Bordens
21 a settlement for what the claims were. This is an attempt to
22 get it resolved, an attempt to get it moving, and an attempt
23 to do it promptly. These issues pertaining to this section
24 of the building, the concern Amica had -- I'm going to show
25 the Court a picture of the playroom, Photograph 113, that

1 while we're arguing --

2 THE COURT: Are those defense exhibits or
3 Plaintiff's exhibits?

4 MR. GEER: These will be defense exhibits.

5 While the parties were arguing about whether or not
6 those walls should be completely stripped or whether they
7 could be cleaned and painted, we could have mold in the
8 basement or any number of things that could happen. So our
9 position is the appraisal proceeding is contractually
10 mandated. It says, if you and me fail to agree -- yes,
11 Mr. Schumann made mistakes in his estimate, that is not an
12 issue. But the point where there is a huge dispute, and
13 these photographs demonstrate the huge dispute, we felt that
14 the appraisal was the way to go.

15 Now, Mr. Murphey talked about Mr. Haller coming in
16 and looking at Mr. Schumann's estimate and laughing. Our
17 response to that is, we wish they had told us because they
18 didn't. And Mr. Bennett's letters sent to Amica suggested
19 numerous times, please select a contractor. Please select a
20 contractor. Well, they never put Mr. Haller in contact with
21 Amica. They never sent Amica a copy of Mr. Haller's
22 estimate. Certainly that would be something worthy of
23 consideration, if there was a local contractor who had an
24 opinion. But that was never made known to us. So to walk
25 into court today and try to use Mr. Haller's estimate, which

1 was, in effect, secret, and to say that somehow indicates
2 that Amica was acting in bad faith I think is totally unfair
3 and irrelevant.

4 In the end what happened was, the appraisal
5 proceeding would have required a competent and independent
6 second opinion. So under that appraisal language we cannot
7 select -- you know, Mr. Murphey said, why didn't we select
8 Visions, why didn't we select Schumann, we can't. They would
9 not be impartial. I don't think it would be fair for me to
10 say to the Court that the person who did the first estimate
11 is totally impartial. He's now been called into question,
12 he's not impartial anymore. They selected Mr. Parise as
13 their umpire despite the fact he had an 8 percent interest in
14 the outcome. He's certainly not impartial either.

15 Amica wrote a letter to the Bordens objecting saying
16 that we don't agree with your appointment with Mr. Parise as
17 an appraiser because he's not impartial, and that became an
18 allegation of bad faith. Bad faith for us to challenge their
19 appointment of their appraiser. That was what was mandated
20 by the policy. So in the end Amica was prepared to do an
21 appraisal, they had named an appraiser they had never worked
22 with before, and knew nothing about the lawsuit, named Jack
23 Owens. The Bordens had prepared to do that but had not.

24 And at that point, as Mr. Murphey told you, counsel
25 got involved. The suggestion was made, if you're going to

1 have to have an independent appraisal anyway, why don't we
2 send a contractor up there. So Amica hired Dan Jones, a
3 contractor out of Pittsburgh. He came up, he looked at it,
4 and he set the damages. Mr. Murphey was so fearful of
5 splitting the baby between the figure which was set forth by
6 Mr. Parise and the figure which was set forth by Mr.
7 Schumann, but that was exactly what the parties agreed to.
8 \$553,000 was what they agreed to.

9 THE COURT: Could you have compelled the insureds to
10 go to appraisal under the policy?

11 MR. GEER: Yes, Your Honor. They could compel us,
12 too. Either party can compel the other. That's an alternate
13 dispute resolution measure in the policy. The policy says,
14 if you and we fail to agree. We really weren't that
15 concerned at this point about the cost of repairs. The real
16 issue was what needs to be repaired.

17 THE COURT: Finally, what did your growing concern
18 about mold -- did anything have to do with the ultimate
19 resolution of the claim?

20 MR. GEER: Well, it never became an issue because
21 the Bordens more or less agreed that Amica wasn't responsible
22 for the mold growing there. Mold is such a problem today in
23 insurance claims, and just generally. So I think everyone is
24 very, very aware of it, very concerned about it, and
25 therefore, following a fire loss -- its nature, firemen go

1 out and put water on the building. And very often that's not
2 a big problem in the winter, but if the weather warms up, you
3 have moister and --

4 THE COURT: And then, was there -- I take it that
5 there was a fundamental difference of opinion as between
6 Amica and then eventually Bordens' counsel -- not as to
7 whether the policy provided for restoration to the prefire
8 condition, because the policy, I gather, says what it says,
9 but as to whether or not the restoration to the prefire
10 condition requirement in the policy reasonably envisioned
11 knocking the walls down where you have soot behind them; is
12 that right?

13 MR. GEER: I don't know that that was a dispute with
14 counsel. I think that was the initial dispute with
15 Mr. Parise.

16 THE COURT: With Mr. Parise. Okay.

17 MR. GEER: And because of that issue -- that was the
18 issue we were going to deal with in appraisal, bring in two
19 impartialists and an umpire and let them decide. And then
20 ultimately it was suggested that perhaps, rather than going
21 through the appraisal proceeding, Amica could just bring in a
22 second contractor to look at it. That was suggested, we
23 listened, we brought in a second contractor, and that
24 contractor went up -- they will testify they were very
25 impressed with him. Mr. Parise said, I had a level of

1 comfort as soon as he got there. I felt like he knew what he
2 was doing. And even though his level is 140, 150,000 below
3 Parise's, they agreed to it.

4 So ultimately we have -- this is an unusual case
5 because we have a release, and everyone's agreed what the
6 damages are, and everyone has agreed, in theory, that 553, or
7 whatever the number is, is what it would take to restore the
8 house to its prefire condition. And everyone agreed that the
9 actual cash value payment which was high \$400,000 range, that
10 was a reasonable payment to the Bordens. They now have that
11 money. They are still entitled, if they ever replace -- even
12 though they have moved to Cincinnati, they are entitled to
13 take the difference between those two numbers and build a
14 house up to \$553,000 on Amica.

15 But, you know, instead what they decided to do here
16 was they demolished the entire house when they moved. So we
17 don't have a house to look at anymore, but we have plenty of
18 photographs.

19 THE COURT: All right. I have to make a quick phone
20 call.

21 (Pause in the proceedings.)

22 THE COURT: Call your first witness.

23 MR. MURPHEY: Yes, Your Honor, we call David
24 Bennett.

25 THE COURT: Mr. Bennett, come on up and spell your

1 name for the court reporter, and then my deputy clerk will
2 swear you in.

3 THE WITNESS: David Bennett, B-E-N-N-E-T-T.

4

5 D A V I D B E N N E T T, first having
6 been duly sworn, testified as follows:

7

8 THE COURT: All right, Mr. Murphey.

9 MR. MURPHEY: Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. MURPHEY:

13

14 Q. Good morning, Mr. Bennett.

15 A. Good morning.

16 Q. Can you please tell us your professional address.

17 A. It's 1500 Corporate Drive --

18 THE COURT: You're going to have to --

19 THE WITNESS: Sorry.

20 A. 1500 Corporate Drive, Suite 1250, Canonsburg, PA.

21 Q. What is your job?

22 A. I am the branch manager.

23 Q. Of what?

24 A. Amica Mutual Insurance Company.

25 Q. That's the Pittsburgh branch?

1 A. Pittsburgh regional office.

2 Q. What territory does your office cover?

3 A. The entire State of West Virginia and Western
4 Pennsylvania.

5 Q. You were the Amica employee with primary
6 responsibility for the Bordens' fire loss claim; is that
7 right?

8 A. In the Pittsburgh office, yes.

9 Q. What do you mean by that?

10 A. There were other people overseeing the loss above
11 me.

12 Q. Who was the adjuster on the loss?

13 A. The adjuster would be -- the adjuster was John
14 Schumann.

15 Q. And who supervised him?

16 A. Me.

17 Q. Who wrote the letters to the Bordens in this case?

18 A. I did.

19 Q. So you were the -- you were the relationship person,
20 as it were, between Amica and the Bordens; is that right?

21 A. That's correct.

22 Q. And you were the person who hired John Schumann?

23 A. Yes.

24 Q. Now, you personally -- you don't have very much
25 experience with large fire losses; is that correct?

1 A. That's correct.

2 Q. I think that you told me before that you've only
3 been on three or four sites before in your entire career.

4 A. That's correct.

5 Q. How long have you been in the fire business?

6 A. 25 years.

7 Q. And although you were responsible for this claim,
8 and it was within your territory, you had never been to Erie
9 before this fire; is that right?

10 A. That's correct.

11 Q. And the first time you were here was about two
12 months after the fire at a meeting which was held on April
13 15th of 2003; is that right?

14 A. That's correct.

15 Q. So you were not personally familiar with any of the
16 contractors or home builders or fire restoration people who
17 work in Erie; is that right?

18 A. That's correct.

19 Q. However, in this case -- I think you told me before,
20 this case did jog your memory that in the past you had worked
21 with a local fire restoration contractor, Peter Hardner &
22 Son; is that correct?

23 A. I'm not familiar with their exact description you
24 presented --

25 THE COURT: Mr. Bennett, you're going to have to

1 keep your voice up.

2 THE WITNESS: I'm sorry.

3 THE COURT: That's okay.

4 A. They're a contractor, to my knowledge, not a
5 restoration contractor.

6 Q. But you agree that you had worked with them in the
7 past on an Erie claim?

8 A. That's correct.

9 THE COURT: When you say "past," do you mean before
10 this fire loss?

11 MR. MURPHEY: That's what I mean, yes.

12 Q. And that's what you understood, Mr. Bennett?

13 A. Yes. At the time I did not remember them.

14 Q. That's right. At the time that this claim came in,
15 you didn't remember Mr. Hardner's name, but when his name
16 surfaced in the file, it occurred to you that you had
17 received a report from him sometime in the distant past?

18 A. Yes. It was much later on in the claim.

19 Q. That you realized that?

20 A. Yes.

21 Q. But again, you weren't familiar with him because you
22 don't commonly handle cases in Erie?

23 A. That's correct.

24 Q. Now, Amica insured the Bordens against the fire loss
25 under Amica's Platinum policy; is that right?

1 A. That's correct.

2 Q. And the Platinum policy is Amica's broadest type of
3 homeowner's policy; is that right?

4 A. That's correct.

5 MR. MURPHEY: I have, marked as Exhibit No. 5, a
6 copy of what I believe to be the Amica policy -- may I
7 approach, Your Honor?

8 (Plaintiff's Exhibit No. 5 marked for
9 identification.)

10 THE COURT: Yes. You don't have to ask permission.

11 MR. MURPHEY: Thank you, Your Honor.

12 Q. Mr. Bennett, do you recognize the document I have
13 marked as Exhibit 5?

14 THE COURT: Where is that? Do I have that?

15 MR. MURPHEY: You should, Your Honor.

16 THE COURT: Is that a loose one?

17 MR. MURPHEY: It is, Your Honor.

18 A. I do recognize that.

19 Q. Is that an accurate copy of the policy that the
20 Bordens owned at the time of the fire?

21 A. Appears to be.

22 Q. Now, you will agree with me that, after this fire,
23 Amica's obligation under its policy was to pay the Bordens
24 whatever it took to restore their home to its prefire
25 condition; is that right?

1 A. That's correct.

2 Q. And that obligation is the same whether the
3 homeowner chooses to repair the house, chooses to demolish
4 it, chooses to move out of town and sell it to somebody else;
5 is that correct?

6 A. That's correct.

7 Q. So any of the decisions that the Bordens made with
8 respect to whether they were going to stay in Erie or move
9 out of town, that was irrelevant to what Amica's financial
10 obligation was with regard to estimating the loss; is that
11 right?

12 A. With regard to estimating the loss, but there is
13 additional living expense that ties into that issue.

14 Q. So the longer it takes them to rebuild the house,
15 the more alternative living expense may be incurred by Amica;
16 is that right?

17 A. Right. In this case, after the settlement was
18 reached, the Bordens continued to stay at that rental house
19 at our expense for about seven months, and then ultimately
20 continued to stay after the agreement was reached --

21 Q. And you continued to pay that; didn't you?

22 A. We paid it for seven months beyond.

23 Q. And my question was, Mr. Bennett --

24 THE COURT: Hold on a second. Way too fast. Wait
25 till he finishes, and then you wait till he finishes.

1 Q. My question was whether Amica's obligation under the
2 dwelling portion of the policy, which you will agree with me
3 is the portion of the policy that is paid to the insured to
4 repair or rebuild their damaged home, that obligation is not
5 affected in any way by what ultimate decisions the
6 homeowner's make?

7 A. That's correct.

8 Q. Now, since this fire occurred outside of the
9 physical territory of your Pittsburgh branch, you hired an
10 independent adjuster to adjust the claim; is that right?

11 A. A general adjuster.

12 Q. But he's independent in the sense that he's not an
13 employee of Amica?

14 A. Correct.

15 Q. And, initially, you had hired a local Erie adjuster
16 from a local -- Crawford & Company Adjusting Service, I think
17 his name is John Levandowski -- you originally hired him, did
18 you not?

19 A. On the date of the loss, the call was made by the
20 Bordens into our call center. The call center tried to
21 assist Dr. Borden with emergency services, and then, in --
22 one approach was to contact our local adjuster on call, and
23 that man, in trying to find a contractor, had called Crawford
24 & Company. And -- which is a local adjusting firm we've
25 used, but never on a large fire loss before. And then, on

1 the next day, when I was told about the fire loss, that's
2 when I informed them because of the lack of experience with
3 Crawford & Company on large losses to contact Schumann.

4 Q. And at that time -- looking at one of the first
5 obligations is to find an emergency board-up contractor to
6 come in and secure the property; is that right?

7 A. That's correct.

8 Q. Did Mr. Levandowski do that in the time that he was
9 involved in the case?

10 A. I don't recall exactly. I wasn't involved in that
11 because I didn't hear about it till the next day.

12 Q. So by the time you heard about it, there was already
13 an emergency services board-up contractor -- by board-up I
14 mean B-O-A-R-D - U-P contractor -- on site; is that right?

15 A. That's correct

16 THE COURT: Let me stop just so I understand the
17 sequence. Mr. Bennett, is it your testimony that when the
18 call came in from Dr. Borden advising Amica about the loss
19 that someone in your organization on their own then contacted
20 Crawford & Company?

21 THE WITNESS: The adjuster on call did. The local
22 adjuster on call.

23 THE COURT: And if you know, is it your
24 understanding that Mr. Levandowski then, during that initial
25 eight- or 10- or 12- or 14-hour period, would have been the

1 individual responsible for getting some contractor out there
2 to start to board up the property?

3 THE WITNESS: That was the idea, but that's not what
4 actually happened.

5 THE COURT: That's not what actually happened.

6 THE WITNESS: What happened was that the local fire
7 marshal, I'm not sure of his title, called back and spoke
8 with the adjuster on call and said there was someone already
9 on site.

10 THE COURT: All right. Go ahead.

11 Q. Do you know who that was that was already on site?

12 A. Visions.

13 Q. Visions, Incorporated?

14 A. Correct.

15 Q. Do you know who it was that hired Visions?

16 A. I would assume Dr. Borden agreed to it.

17 Q. You said, "agreed to it." Do you know who brought
18 them to the scene?

19 A. He was already --

20 Q. Do you know who brought them to the scene?

21 A. He was already at the scene because he was a
22 fireman. The fire marshal called and told us that there was
23 some -- someone there that could do the work, and we said,
24 well, that's fine.

25 Q. So your understanding is that the principal of

1 Visions, which is Brian Seifert -- that he was a fireman, and
2 therefore, he was already on the scene?

3 A. That's correct.

4 Q. So in addition to fighting the fire, he was also
5 going to perform the board-up services?

6 A. That's correct.

7 Q. So when you learned of that you decided that was
8 fine and you didn't need to get another contractor?

9 A. Correct.

10 Q. Do you know whether Mr. Levandowski contacted anyone
11 else, such as Peter Hardner & Son, for instance, during the
12 brief time he was involved in the case?

13 A. I believe he did.

14 Q. Do you know why it was that Mr. Hardner didn't
15 ultimately serve as the board-up contractor?

16 A. Because Visions was already on site.

17 Q. Do you know who it was that made the decision to
18 leave Visions on site and not replace it with Hardner?

19 A. I assume the adjuster on call.

20 Q. Do you know that?

21 A. I don't know the answer to that specifically. I'm
22 assuming.

23 Q. Do you know whether that decision was ever actually
24 made affirmatively by somebody? To say, we've called
25 Hardner, Visions is on the scene, I guess we'll leave Visions

1 in place?

2 A. I'm not sure about that.

3 Q. You don't know. Now, at the time you didn't know
4 anything about Seifert or Visions; is that correct?

5 A. That's correct.

6 Q. You didn't know anything about any fire restoration
7 contractors in Erie?

8 A. That's correct. The call center, when he originally
9 called -- we have an agreement with an outfit called Disaster
10 Cleanup International, and they have contractors in various
11 areas throughout the Country, and Disaster Cleanup
12 International did not have a contractor they could recommend
13 to us, and we did not have any knowledge of a contractor at
14 that time.

15 Q. So nobody had any information in your organization,
16 or in the contacts that you had, about Erie?

17 A. That's correct.

18 Q. Now, the day after the fire you hired John Schumann
19 to adjust the case; is that right?

20 A. That's correct.

21 Q. And this was, I think, the second time you had
22 worked with Schumann.

23 A. Yes.

24 Q. And he's on a list of national adjusters that you
25 can call for losses like this?

1 A. Yes.

2 Q. That are outside the physical territory of your
3 branch?

4 A. Correct.

5 Q. What is the physical territory of your branch? How
6 close to Erie does that get?

7 A. Can you restate that?

8 Q. Yes. You said that Schumann was called because the
9 loss was outside the physical territory of your branch;
10 although, the territory for which you're responsible is all
11 of West Virginia and Western Pennsylvania.

12 A. We have one adjuster, and he services basically the
13 Pittsburgh area.

14 Q. So outside of that area you have to use
15 independents?

16 A. We do.

17 Q. Now, even before -- I'm sorry, do you know whether
18 Mr. Schumann had ever worked in Erie before?

19 A. No.

20 Q. No, you don't know, or no, he had not?

21 A. I have no knowledge.

22 Q. You don't know one way or the other?

23 A. No.

24 Q. So do you have any idea whether Mr. Schumann had any
25 contacts in Erie? Whether he knew any restoration

1 contractors? Knew any homebuilders?

2 A. No, I do not.

3 Q. Did he ever tell you that he did?

4 A. No.

5 Q. Now, even before Mr. Schumann arrived at the scene,
6 you knew that this was a pretty serious fire?

7 A. Correct.

8 Q. That's the initial report you had gotten, was that
9 it was serious?

10 A. Yes.

11 Q. Mr. Bennett, I'm showing you a binder which we have
12 marked as Exhibit 3. If you could take a minute and look at
13 that and let me know whether these are documents which
14 comprise, in part, the Amica claim file for this loss.

15 (Plaintiff's Exhibit No. 3 marked for
16 identification.)

17 A. They appear so.

18 Q. Thank you. Now, Mr. Bennett, you received a
19 telephone loss report, correct?

20 A. Correct.

21 Q. That would be, kind of chronologically anyway, the
22 first thing in your file; is that right?

23 A. One of them, yes.

24 Q. It would be the -- it would be the way in which you
25 were -- at least in the file, where the whole loss is

1 introduced because that's the loss report you got from the
2 Bordens, correct?

3 A. Correct.

4 Q. I put on the screen, Mr. Bennett, a copy of the loss
5 report -- and this is Page 2 of. Do you see that?

6 A. Yes.

7 Q. And you'll see that I've highlighted portions of it.
8 And you'll agree with me that your loss report indicated,
9 "The insured stated that the fire started in the west part of
10 the house, in the basement, at approximately 1:00 p.m. He
11 was alone and smelled smoke. The smoke was so thick he left
12 the home and called the fire department. The smoke damage
13 seems to be very extensive." Is that correct?

14 A. Correct.

15 Q. And further down, highlighted, this report told you,
16 "The insured has been told by the fire department that all
17 the floors in the home are bowed. The insured stated that
18 the fire department had to cut a large hole in the roof of
19 the home, and the garage that was attached to the home was
20 affected also." Is that right?

21 A. That's what it says.

22 Q. So this is the information to be had at that time.
23 And this is dated February 16th; is it not?

24 A. That's the information the Bordens conveyed to the
25 rep, yes.

1 Q. On the day of the fire?

2 A. I believe it was the day of the fire. I couldn't
3 see it there.

4 Q. I'm sorry?

5 A. You moved it. It would tell you at the bottom.

6 Q. I'm sorry, I apologize. Where would the date be on
7 here?

8 A. The bottom.

9 Q. Do you see the date?

10 A. Yes. February 16th.

11 Q. I'm sorry, Mr. Bennett, I didn't mean to distract
12 you.

13 Now, at the top of Page 2, and this is Exhibit 3-3,
14 it also indicates, "The fire marshal had asked for permission
15 to call a demolition company since the west part of the
16 structure is a hazard." Is that right?

17 (Plaintiff's Exhibit No. 3-3 marked for
18 identification.)

19 A. Correct.

20 Q. Now, Mr. Schumann arrived in Erie on February 19,
21 2003, which was three days after the fire; is that right?

22 A. Yes. On the day of the fire there was a very --

23 Q. I'm sorry, Mr. Bennett, if you could just answer the
24 questions that I ask, I'd appreciate that.

25 THE COURT: Did he come to Erie on February -- what

1 was the date?

2 MR. MURPHEY: 19th.

3 THE COURT: 19, 2003, Mr. Bennett, to the best of
4 your knowledge?

5 THE WITNESS: Yes.

6 Q. Now, after Mr. Schumann originally arrived at the
7 scene, he reported to you that the damage was extensive;
8 isn't that correct?

9 A. Correct.

10 Q. And he also, on the first day that he was in Erie,
11 estimated that the dwelling loss would amount to at least
12 \$250,000; is that correct?

13 A. I don't recall offhand.

14 Q. I'll show you a document which is marked Exhibit 3-5
15 from your claim file. Do you recognize this as an e-mail
16 that you sent to a woman named Lisa St. Onge?

17 (Plaintiff's Exhibit No. 3-5 marked for
18 identification.)

19 A. Yes.

20 Q. Who was Lisa St. Onge?

21 A. She was the examiner at the time.

22 Q. What was her responsibility with regard to the
23 claim?

24 A. She oversees a region, that includes the Pittsburgh
25 regional office.

1 Q. What's her involvement with this particular case?
2 What were her duties?

3 A. She examines the file, she reviews the work that's
4 being completed, she provides input, she has authority beyond
5 my authority. I report to her.

6 Q. At that time, on February 19th of 2003, you were
7 reporting to Ms. St. Onge that Schumann had said that the
8 damage is extensive, and he guesses Coverage A damages of
9 \$250,000; is that right?

10 A. That was his ballpark estimate.

11 Q. And Coverage A is the dwelling loss?

12 A. Correct.

13 Q. Again, that was Exhibit 3-5.

14 Now, Mr. Schumann was in Erie for about a week
15 developing his estimate; is that right?

16 A. I'm not sure of the time frame.

17 Q. I'm going to show you an exhibit, which I have
18 marked Exhibit 3-1, which is part of the claim file. Do you
19 recognize this?

20 (Plaintiff's Exhibit No. 3-1 marked for
21 identification.)

22 A. Yes.

23 Q. It is the claim activity log for Mr. Schumann; is it
24 not?

25 A. Yes, it is.

1 Q. So it shows what he did on the file at least in
2 summary form; is that right?

3 A. That's correct.

4 Q. Can you look at that and tell me how long it was
5 that Mr. Schumann was in Erie?

6 A. What you provided goes from February 17th through
7 February 27th.

8 Q. Can you look at it -- may I have it?

9 A. Sure.

10 Q. Thank you. Allow me to refer you to -- now, Exhibit
11 3-1 goes through February 27th, and then let me tell you that
12 the next claim activity note is dated February 28th, that's
13 on Exhibit 3-2, and that indicates that Mr. Schumann met with
14 you in Pittsburgh on February 28th. Does that allow you to
15 conclude that Mr. Schumann was in Erie from February 19th to
16 February 27th developing his estimate?

17 (Plaintiff's Exhibit No. 3-2 marked for
18 identification.)

19 A. I think so, yes.

20 Q. So during the time Mr. Schumann was in Erie, from
21 February 19th to February 27th, he was developing his
22 estimate and keeping you informed of his activities; is that
23 right?

24 THE COURT: I think you said February -- I
25 apologize. You're correct, February 19th. Go ahead.

1 MR. MURPHEY: Thank you, Judge.

2 Q. Now, on February 25th you spoke with Mr. Schumann,
3 and he said that he was close to developing an estimate. Let
4 me show you an exhibit marked 3-7. Do you recognize this as
5 another e-mail from you to Ms. St. Onge?

6 (Plaintiff's Exhibit No. 3-7 marked for
7 identification.)

8 A. Yes, I do.

9 Q. At that point you tell Ms. St. Onge that you spoke
10 with Schumann today, he is still on site working the loss, he
11 feels his estimate will be completed by tomorrow; is that
12 correct?

13 A. That's what it says.

14 Q. Do you have any reason to believe that that was
15 inaccurate?

16 A. No.

17 Q. Now, the e-mail also says, does it not, in the next
18 highlighted section, again this is Exhibit 3-7, that John --
19 and John is Mr. Schumann, correct?

20 A. Correct.

21 Q. "John feels that he will not choose Visions" -- and
22 in the preceding sentence it says, "The insured has not
23 chosen a contractor. John feels that he will not choose
24 Visions. He is trying to impress on the insureds for their
25 need to select a contractor." Did I read that correctly?

1 A. Yes.

2 Q. Did Mr. Schumann tell you why it was that the
3 insureds were unlikely to choose Visions to do their repair
4 work?

5 A. No.

6 Q. Did you ask him why?

7 A. No.

8 Q. At that time did you know anything about Visions?

9 A. I don't recall at that time, no.

10 Q. Had you ever spoken to any other insurance companies
11 that had used Visions' services?

12 A. No.

13 Q. Had you spoken to any insurance adjusters who had
14 used Visions' services?

15 A. No.

16 Q. Had you spoken to any customers, homeowners, anybody
17 that could give you an opinion regarding Visions?

18 A. No. I only called Visions.

19 Q. And you did that later, and we'll talk about that in
20 a minute.

21 Did you ever visit Visions' business locale?

22 A. No.

23 Q. Did you ever look them up in the Erie phone book?

24 A. I don't have an Erie phone book.

25 Q. Did you ever look them up on the Internet?

1 A. No.

2 Q. Now, about two weeks after this, and this is what
3 you were getting to, after Mr. Schumann had delivered his
4 estimate and told Amica that Visions was supportive of his
5 estimate and could do the work for his estimated price, Lisa
6 St. Onge asked you to look into Visions; is that correct?

7 A. That's correct.

8 Q. She asked you to find out what kind of company it
9 was and whether they were capable of doing this type of work,
10 correct?

11 A. Correct.

12 Q. And you interviewed Mr. Seifert; is that right?

13 A. That's correct.

14 Q. But you didn't talk to anybody else?

15 A. No, I did not.

16 Q. And your interview with Mr. Seifert, what he told
17 you, is documented in the file somewhere, but again, I don't
18 need to go down through the list, you didn't talk to any
19 other third parties about Visions?

20 A. No.

21 Q. Did you ever talk to the Bordens about their
22 concerns with Visions?

23 A. I didn't know they had any concerns with Visions.

24 Q. Well, Mr. Schumann had reported to you that he did
25 not think that the Bordens would use Visions, did he not?

1 A. That doesn't convey to me that they have a problem
2 with Visions or concerns --

3 THE COURT: Sir, I can't hear you, and I'm sitting
4 next to you.

5 THE WITNESS: I don't know how close to get.

6 THE COURT: There's two ways people use these
7 things, sometimes they get right on top of, and it's more
8 than you need, but if you just speak like I'm speaking, but
9 you don't get right onto it -- actually, I'm as concerned
10 about the court reporter as I am about myself.

11 THE WITNESS: I'm sorry.

12 THE COURT: That's quite all right. It's a whole
13 new experience when people get up on these mics.

14 Q. So, Mr. Bennett, when Mr. Schumann reported to you
15 that the Bordens were unlikely to choose Visions to serve as
16 their contractor, you did not take that to be any negative
17 comment regarding Visions?

18 A. I don't --

19 Q. It's a yes or no question.

20 A. Could you say it again, I'm sorry.

21 Q. Yes. We just looked at Exhibit 3-7, which was your
22 e-mail of February 25, 2003, in which you reported that
23 Mr. Schumann had told you that the Bordens were unlikely to
24 use Visions as their repair contractor. My question was, you
25 did not interpret that to be any negative comment by the

1 Borden's about Visions?

2 A. No.

3 Q. And so you thought at that time that it was
4 perfectly reasonable for Schumann to rely on Visions' opinion
5 regarding the estimate even though the Borden's had indicated
6 they weren't going to use Visions?

7 A. Correct. We didn't have another contractor's -- we
8 were never provided with another contractor's estimate from
9 the Borden's.

10 Q. Did you ever suggest any contractors' names to the
11 Borden's?

12 A. No. But I did suggest that they have a contractor
13 review the estimate.

14 Q. Now, when you say that, and it's -- you know, you
15 say that several places in the file. And, in fact,
16 Mr. Schumann, according to this e-mail to Lisa St. Onge of
17 February 25th, you specifically say, "He is trying to impress
18 on the insureds" --

19 THE COURT: A little too fast for the reporter.

20 MR. MURPHEY: I'm sorry, Judge.

21 Q. "That he is trying to impress on the insureds for
22 their need to select a contractor"; is that right?

23 A. Right.

24 Q. Now, Amica has an independent obligation to
25 formulate an estimated amount of repair in this case; is that

1 right?

2 A. That's correct.

3 Q. Regardless of whether the person has a contractor or
4 not; is that right?

5 A. That's correct.

6 Q. So having the contractor in place is not important
7 for purposes of Schumann developing his estimate? It's
8 important for the timing of the Bordens getting their repairs
9 done so that they don't have to incur any more alternate
10 living expense; is that correct?

11 A. It facilitates the process.

12 Q. Did Mr. Schumann ever tell you that the Bordens had
13 given him names of contractors in Erie?

14 A. I'm sorry?

15 Q. Did Mr. Schumann ever tell you that the Bordens had
16 given him names of contractors that they would consider using
17 in Erie?

18 A. No.

19 Q. And neither you nor Mr. Schumann ever gave any names
20 to the Bordens; is that correct?

21 A. That's correct.

22 Q. Now, during the time that Mr. Schumann was in Erie,
23 you learned a number of things about the Bordens by report
24 from Mr. Schumann; isn't that correct?

25 A. Correct.

1 Q. For instance, you knew that they had been -- they
2 were devastated by this fire?

3 A. Sure.

4 Q. And that's not an unusual occurrence in your
5 industry; is it?

6 A. No.

7 Q. And that they had a daughter, a 3-year-old girl
8 named Emma, who had some particular health issues; is that
9 correct?

10 A. Yes.

11 Q. It was reported to you that whatever would happen in
12 this case would require specific attention to -- the young
13 girl's name is Emma -- to Emma's -- to her safety, exposure,
14 and assistance; is that correct?

15 A. I was told that it was a concern.

16 Q. That was an awkward question. You were told early
17 on in the case that the 3-year-old daughter had some
18 particular health issues that the Bordens were concerned
19 about, correct?

20 A. Yes. Correct.

21 Q. And you knew that the Bordens were separated from
22 their children, their children were living in Pittsburgh,
23 they were living in Erie, and Dr. Borden had just taken a new
24 job at Saint Vincent Health Center and had enormous
25 responsibilities, correct? You were advised of all that?

1 A. I thought they were living in a hotel here after the
2 fire loss.

3 Q. I'm going to show you a document, which is marked
4 Exhibit 3-6. Do you recognize this as a report dated
5 February 21st from Mr. Schumann?

6 (Plaintiff's Exhibit No. 3-6 marked for
7 identification.)

8 A. Yes, it is.

9 Q. Now, Mr. Schumann's company is called Property
10 Claims Services, Inc.; is that right?

11 THE COURT: Can you zoom that up a little bit.
12 Bring that up a little bit more.

13 Q. Mr. Borden's company is called Property Claims
14 Services, correct?

15 A. Correct.

16 Q. I say that because that's the letterhead.

17 A. Correct.

18 Q. At any rate, he is reporting to you, at the bottom
19 of this document, on February 21st, Exhibit 3-6, that in
20 addition to Mr. and Mrs. Borden being devastated by the
21 recent fire and their lives being fragmented, the three small
22 children are currently with Mrs. Borden's family in
23 Pittsburgh; is that right?

24 A. That's correct.

25 Q. It was also reported to you, this is the second page

1 of that February 21st report, dated -- or dated February
2 21st, Exhibit 3-6, "Mrs. Borden has had a very difficult time
3 dealing with the absence of her children as well as
4 addressing the special needs educational arrangements she has
5 undertaken as one of her children requires this type of
6 attention. And secondly, Dr. Borden moved to Erie with his
7 family six months ago to undertake and manage a new program
8 related to his expertise. Dr. Borden is a neurologist at the
9 local hospital and is feeling stressed due to his enormous
10 responsibilities in his new position." So this is
11 information you had about the Bordens, correct?

12 A. Correct.

13 Q. But at this point you were also frustrated with the
14 Bordens because they hadn't selected a contractor to review
15 the estimate, correct?

16 A. I wouldn't characterize it as frustrated.

17 Q. Now, the Bordens -- did you at any time suggest that
18 the Bordens get a public adjuster involved in the case?

19 A. No, I did not.

20 Q. Now, you will agree with me that at this time the
21 Bordens did make available to Mr. Schumann other members of
22 their family to assist them in the handling of the loss?

23 A. That's correct.

24 Q. And that included Dr. Borden's brother and
25 Dr. Borden's mother; is that correct?

1 A. I'm aware that the mother flew out here because John
2 assisted her -- actually, drove her --

3 Q. My question, Mr. Bennett -- and I know that you want
4 to tell us the good things that Amica did in this case, and
5 they did many good things, but the focus of my question is
6 whether the Bordens had made available to you two members of
7 their family to assist in the handling of the loss.

8 A. Well, I'm not sure the extent of the involvement of
9 Dr. Borden's brother. My understanding was that he was
10 communicating with Dr. Borden. I'm not familiar with his
11 communicating with Schumann or myself.

12 Q. But you do agree that Dr. Borden's mother flew in
13 from Connecticut to assist in the handling?

14 A. Yes.

15 Q. You were also told by Mr. Schumann the nature of the
16 loss? That is, the type of home that the Borden's lived in,
17 the type of neighborhood that they lived in, and the extent
18 of the fire; is that correct?

19 A. Correct.

20 Q. And Mr. Schumann told you that they lived in a
21 5,500-square-foot house on a 2-acre lot in an upscale
22 neighborhood in Erie; is that correct?

23 A. That sounds correct. I don't recall, but that
24 sounds correct.

25 Q. And that the fire had started in the basement,

1 correct?

2 A. Correct.

3 Q. And that the basement sat under about 50 percent of
4 the structure; is that right?

5 A. I don't remember the percentage. I know it
6 didn't -- there was a large portion of the house that did not
7 have a basement; it had a crawl space

8 THE COURT: This isn't germane, but just out of
9 curiosity, did they ever figure out what caused the fire?

10 THE WITNESS: Yes.

11 THE COURT: What was it?

12 THE WITNESS: We had a cause and origin guy that we
13 assigned to the claim that we -- I think that Monday after
14 the fire loss, and it was determined that Dr. Borden had been
15 using linseed oil to -- I think he -- my memory, which is
16 somewhat poor these days, to stain some frames -- picture
17 frames, and linseed oil, apparently if you ball it up, it's
18 an oxidizer, I'm not positive about that, but if you ball it
19 up, it actually generates heat. And apparently Dr. Borden
20 had left balls of cotton that he was using to apply the
21 linseed oil and he -- left it balled up and that produced
22 heat and actually started the fire.

23 THE COURT: Go ahead, Mr. Murphey.

24 MR. MURPHEY: Thank you, Your Honor.

25 Q. Mr. Bennett, I'm showing you a report dated February

1 25, 2003. It's Exhibit 3-8, and this is from Mr. Schumann;
2 is that correct?

3 (Plaintiff's Exhibit No. 3-8 marked for
4 identification.)

5 A. Yes.

6 Q. And this is his summary of the dwelling loss; is
7 that correct?

8 A. I -- I can only see part of it.

9 Q. What does it say at the top? "Coverage A
10 Summary" --

11 A. Summary.

12 Q. -- "Agreed Cost for Repairs"; is that right?

13 A. Yes, it does.

14 Q. Now, on Page 2 of that report, Mr. Schumann told you
15 that the Bordens had made available Dr. Borden's brother; is
16 that correct? At the bottom of Page 2 of this report it
17 says, "Although I have discussed the status of my activity
18 with Dr. Borden while in Erie, his brother Richard will be
19 taking a leave towards assisting with decisions and moving
20 this claim towards conclusion. Richard Borden is located in
21 Hartford, Connecticut, and is an attorney working with the
22 Hartford Insurance Company." Is that right? Did I read that
23 correctly?

24 A. You did.

25 Q. So, does that answer the question that I asked you

1 before? About whether Mr. Richard Borden had been made
2 available by the Bordens to assist in the handling of the
3 claim?

4 A. Well, I guess --

5 Q. It's a yes or no question.

6 A. Made himself available to Dr. Borden, not to me.

7 Q. Doesn't this indicate that he had made himself
8 available to Mr. Schumann?

9 A. To make someone available you have to give them
10 contact information. I don't see that there.

11 THE COURT: Move on. I've got it.

12 MR. MURPHEY: Thank you, Your Honor.

13 Q. The third page of the report, I have several
14 highlighted sections of it just to show what information
15 Mr. Schumann was showing you. This is Exhibit 3-8, again, on
16 February 25th. He told you at that time that the dwelling
17 contained approximately 5,500 square feet of heated living
18 area, with an attached two-car garage. The dwelling is
19 located on a 2-acre lot in an upscale neighborhood; is that
20 correct?

21 A. That's correct.

22 Q. And further down he noted, "The fire department
23 personnel called to the scene broke out several windows on
24 both levels of the structure, as well as cut numerous large
25 openings in the lower level roof." Is that right?

1 A. That's what it says.

2 Q. And further down, in "Interior Considerations", Mr.
3 Schumann noted that, "As this fire began in the basement
4 below the main-level kitchen, den, and formal dining room,
5 the floor system, interior walls, and ceiling joists require
6 replacement to repair these structural areas of obvious
7 damage. The partially finished basement, used as a
8 combination storage, utility, and laundry area, also
9 sustained significant damage to the extent that the main
10 34-feet-long steel high beam was twisted due to the extreme
11 heat generation in this area during the fire. Consequently,
12 any basement wall framing, strips, and paneling attached to
13 the exterior block walls was completely destroyed along with
14 the geothermal exchange units and other mechanical elements.
15 A structural engineer was brought in to evaluate and
16 determine necessary structural considerations pertaining to
17 the repair procedures." Mr. Bennett, did you ever see a
18 report from a structural engineer?

19 A. I do not recall seeing one.

20 Q. Do you know if Mr. Schumann ever got a structural
21 engineer?

22 A. I cannot recall.

23 Q. Would you have been told by Mr. Schumann if he did?

24 A. Yes.

25 Q. And you don't recall him telling you that?

1 A. I don't recall, no.

2 Q. The last sentence says, "The remaining interior
3 main-level and second-level areas sustained significant smoke
4 and soot damage to dry wall, ceilings, and walls, and floor
5 covering." Is that right?

6 A. That's correct.

7 Q. So this was -- what I just read from was a report
8 dated February 25, 2003, and about that time, or maybe the
9 next day, Mr. Schumann sent you an estimate of repairs, and
10 his estimate was for about \$328,000; is that right?

11 THE COURT: Wasn't there a figure in that letter?
12 Or did I miss that? I thought I saw a figure.

13 MR. MURPHEY: There probably was.

14 THE COURT: Can you put it back up again.

15 MR. MURPHEY: This would not have been an estimate
16 itself, but a report that accompanied the estimate. Yes,
17 Your Honor.

18 Q. Mr. Bennett, in the middle of Page 2 of Exhibit 3-8
19 there is an estimate summary section. Do you see that?

20 A. Yes.

21 Q. And in that section Mr. Seifert -- I'm sorry,
22 Mr. Schumann estimated the total loss at \$328,999.14, is that
23 right?

24 A. That's correct.

25 Q. He also indicated that he had reviewed and discussed

1 this estimate with Brian Seifert of Visions; is that right?

2 A. Yes.

3 Q. And, of course, just backing up to the prior
4 question, at this time you didn't know anything more about
5 Visions than you already testified?

6 A. That's right.

7 Q. So then he sent you the physical estimate, which is
8 many pages long, that concluded what his summary said, and
9 that is that the total loss was 328,000 something?

10 A. That's correct.

11 Q. At that time did you speak with Mr. Seifert at all
12 about the estimate?

13 A. No.

14 Q. Did you ever get an estimate from Mr. Seifert?

15 A. No.

16 Q. Now, you were advised, were you not, that on
17 February 27th of 2003 Mr. Schumann spoke with Jon Borden's
18 brother about the estimate, and he posed some objections to
19 it; is that correct?

20 A. I don't recall. I'm sorry.

21 Q. I'm going to show you an exhibit marked 3-1, which
22 is the claim activity outline that we previously identified
23 that showed Mr. Schumann's day-to-day activities on the file.
24 This is the Page 4 of Exhibit 3-1. You'll agree with me that
25 this is a summary of Mr. Schumann's activities on February

1 27th? Do you agree that that's what it is?

2 A. Yes.

3 Q. Do you agree that he reported that he had talked
4 with Richard Borden concerning the estimate, and he met with
5 some resistance concerning cleaning versus removal and
6 replacement of dry wall throughout interior of dwelling; is
7 that right?

8 A. Yes. That's correct.

9 Q. And this information would have been passed along to
10 you in the course of --

11 A. Yes.

12 Q. Now, Mr. Schumann left Erie on or about February
13 27th, we had talked before about how he had come to
14 Pittsburgh and met with you on the 28th, and he left Erie
15 without changing his estimate in any way; is that right?

16 A. That's right.

17 Q. Even after the conversation with Richard Borden?

18 A. That's right.

19 Q. In fact, Mr. Schumann never changed his estimate at
20 any time, did he?

21 A. No.

22 Q. Now, on March 1st, Mr. Schumann sent you another
23 estimate, but this was for a different thing. This was an
24 estimate of the value of the house, if you tore it down and
25 rebuilt it. I'm showing you an exhibit marked 3-10, dated

1 March 1, 2003, and this is a replacement cost evaluation,
2 which would be the amount that Mr. Schumann was estimating it
3 would cost to rebuild the Bordens' house from the ground up;
4 is that right?

5 (Plaintiff's Exhibit No. 3-10 marked for
6 identification.)

7 A. That's correct.

8 Q. And his estimate was \$762,913; is that right?

9 A. That's correct.

10 Q. You get that report because you need to determine
11 whether the house can be repaired or whether it should be
12 totalled; is that right?

13 A. There's other reasons, too.

14 Q. Another reason is because of the replacement cost
15 endorsement that the Bordens had; is that right?

16 A. That's one of them.

17 Q. Just explain to the Court, the replacement cost
18 endorsement is a provision that Mr. and Mrs. Borden had in
19 their policy which called for an automatic increase in the
20 amount of their coverage for their dwelling loss if it turns
21 out that the total value of their house is greater than the
22 policy limit; isn't that right?

23 A. That's correct.

24 THE COURT: Say that again.

25 MR. MURPHEY: Yes. Can I address this to Your

1 Honor. The Bordens had a provision in their policy called a
2 replacement cost endorsement, pursuant to which Amica
3 promised to pay the total value of the house, regardless of
4 the value of the house, if it was totalled. Even if that
5 amount is greater than the amount of coverage that they
6 purchased. So, for example, Mr. Bennett --

7 THE COURT: For instance, that would take into
8 account appreciation of the house?

9 Q. Well, does it, Mr. Bennett?

10 A. The -- yes. Yes, it does.

11 Q. The replacement cost takes into account depreciation
12 of the house?

13 A. Appreciation.

14 THE COURT: Appreciation.

15 MR. MURPHEY: That's what I didn't understand. Yes,
16 it absolutely would, Your Honor. So that's an extra benefit
17 you get under this policy.

18 Q. So, Mr. Bennett, in this case the Bordens' dwelling
19 limit was \$577,000, correct?

20 A. On the declarations page, yes.

21 Q. And that would be revised upward if it was
22 determined that their house was totalled, for lack of a
23 better term?

24 A. If the damages reach that point, yes.

25 Q. Well, let me understand this: If your estimated

1 damages were \$600,000, even if the house could be rebuilt
2 rather than torn down and rebuilt -- strike that.

3 If you conclude that the damages are \$600,000, the
4 Bordens' policy limit would be automatically revised upward
5 to \$600,000?

6 A. That's correct.

7 Q. So it doesn't matter whether the estimator concludes
8 that the house needs to be torn down and rebuilt or whether
9 it's just going to be real expensive to repair it so long as
10 that number is greater than the \$577,000, the policy is going
11 to be revised upward?

12 A. That's correct.

13 Q. So when you learned the total value was
14 \$760,000--some, that meant Amica had exposure greater than the
15 \$577,000 limit that had been purchased by the Bordens?

16 A. Yes.

17 Q. In fact, that also revises the other coverages
18 upwards; does it not?

19 A. Yes, it does.

20 Q. On a percentage basis?

21 A. Percentage basis.

22 Q. So if, just for example, the amount to repair the
23 Bordens' house was 50 percent more than the \$577,000 limit,
24 your other coverages, such as the coverage for the contents
25 and the coverage for alternative living expenses, would also

1 be increased by 50 percent; is that right?

2 A. I'm not sure of the math on that. The -- I think
3 Coverage C is 75 percent of Coverage A. So proportionally
4 they would increase.

5 Q. Thank you. I understand that. So they would
6 increase proportionally depending on --

7 A. That's correct.

8 Q. But that's another reason why it was important to
9 find out what the total value of the house was?

10 A. That's correct.

11 Q. Now, on March 3rd of 2003, this is Exhibit 3-12, you
12 wrote to the Bordens. You agree this is a letter from you to
13 the Bordens?

14 (Plaintiff's Deposition Exhibit No. 3-12 marked for
15 identification.)

16 A. Yes, it is.

17 Q. And at that time you tell the Bordens that John
18 Schumann has completed his dwelling estimate, and that
19 Visions has indicated that they are willing to complete the
20 repairs based on his estimate?

21 A. Correct.

22 Q. And from that date, March 3, 2003, forward, the
23 Bordens were never advised that Mr. Schumann had changed his
24 estimate in any way?

25 A. No.

1 Q. Now, at this time you also say, in the sentence
2 that's after the highlighted sentence, "If you would like to
3 use another contractor, please make arrangements to have them
4 inspect the house and review Property Claims Services'
5 estimate so repairs can begin as soon as possible." Is that
6 correct?

7 A. Correct.

8 Q. So at that time you were not inviting the Bordens to
9 have a contractor assist with the preparation of the
10 estimate, you were telling them, here's the estimate, and
11 it's time to get the house repaired?

12 A. No, I was not.

13 Q. Well --

14 THE COURT: Put that back up there.

15 Q. I guess the letter speaks for itself. It says, does
16 it not, "If you would like to use another contractor, please
17 make arrangements to have them inspect the house and review
18 Property Claims Services' estimate so repairs can begin as
19 soon as possible."

20 A. My point was for them to review the estimate, we'd
21 consider what they had to say, but we do want the repairs to
22 be completed as soon as possible.

23 Q. Did the letter say, or another letter say, please
24 have a contractor look at this, and maybe we'll revise the
25 estimate depending on what --

1 A. No. No, it does not.

2 Q. Thanks. Again, you still don't have any other
3 information on Visions at this time when you tell the Bordens
4 that Visions is prepared to repair it?

5 A. I don't recall.

6 Q. Now, after that date, when you told the Bordens that
7 the estimate had been prepared, the Bordens already had a
8 copy of the estimate, did they not?

9 A. I believe the adjuster leaves a copy of the estimate
10 with the insureds.

11 Q. So at the same time you would have gotten the
12 estimate, they would have gotten the estimate?

13 A. Roughly speaking, yes.

14 Q. That's what Mr. Schumann's notes indicate. You
15 wouldn't be surprised if that's the case?

16 A. No.

17 Q. In fact, to refresh both of our recollections, on
18 February 27th, which is a couple days before your March 3rd
19 letter, he reported that he had already reviewed the estimate
20 with Mr. Borden's brother, right?

21 A. I don't recall that. I'm sorry.

22 THE COURT: Keep your voice up, Mr. Bennett. The
23 court reporter is having a hard time.

24 THE WITNESS: Sorry.

25 Q. After the Bordens receive Mr. Schumann's estimate,

1 and after you have sent a letter to the Bordens saying that
2 this -- that the estimate has been completed and please begin
3 making repairs, the Bordens hired a public adjuster; is that
4 correct?

5 A. That's correct.

6 Q. Now, I'm showing you an e-mail from you to Lisa St.
7 Onge, dated March 5, 2003. And in that letter you state, "I
8 have been informed the insured has retained a public adjuster
9 consulting firm. When asked if he was a public adjuster, he
10 said he was a consultant licensed in a number of states. It
11 is not clear that he is licensed in Pennsylvania." Did you
12 ever do any further investigation to determine whether
13 Mr. Parise, who we know was the public adjuster, was licensed
14 to practice in Pennsylvania?

15 A. No.

16 Q. Did the issue of whether or not he was licensed in
17 Pennsylvania have any impact at all on Amica's handling of
18 the claim?

19 A. No.

20 Q. You also reported to Ms. St. Onge that you had been
21 told that the public adjuster said that the dwelling estimate
22 would be double what Mr. Schumann had wrote; is that correct?

23 A. That's correct.

24 Q. And you were also told that Mr. Schumann had had a
25 conversation with Mr. Borden's brother in which Mr. Borden's

1 brother had expressed concern with smoke in the framing and
2 insulation, and that he feels the house will always smell of
3 smoke; is that right? Do you see that in the second
4 paragraph?

5 A. I'm reading it. I have bifocals, I'm sorry.

6 Q. That's okay.

7 A. Yes, I do see that.

8 Q. So you agree at that time it was reported to you
9 that the Borden family had expressed concern about smoke in
10 the insulation and whether the house would continue to smell
11 like smoke even after repairs; is that right?

12 A. Yes.

13 Q. Do you agree that part of Amica's obligation is to
14 put this house back into prefire condition?

15 A. Yeah.

16 Q. To pay the amount that's necessary to do that?

17 A. Yes.

18 Q. And that would include a house that doesn't smell of
19 smoke, correct?

20 A. Correct.

21 Q. Now, further below there's one line that says, "The
22 insureds are not participating in the adjusting process, and
23 this has been difficult for Schumann." Do you see that?
24 That's the last sentence --

25 A. Yes.

1 Q. -- under Coverage A.

2 A. Yes. I see it.

3 Q. But you had not recommended to the Bordens that they
4 hire a public adjuster or an attorney to assist them; is that
5 correct?

6 A. No.

7 Q. Also, you will agree with me that the insureds being
8 unavailable, or, I guess you said, not participating in the
9 adjusting process, that didn't affect Mr. Schumann's
10 estimating at all; is that correct?

11 A. Well, it could be adjusted differently if they had
12 participated, yes.

13 Q. Mr. Schumann's obligation, as you understood it, was
14 to estimate the cost that it would take to put the house in
15 its prefire condition, right?

16 A. Right.

17 Q. And Dr. Borden or Mrs. Borden, or anybody else, they
18 don't participate in that process; is that correct?

19 A. Well, they can participate in the sense that they
20 can review the estimate and point out anything that he has
21 missed, Corian versus Formica, sure.

22 Q. And that's what they hired Mr. Parise to do,
23 correct?

24 A. Yes.

25 Q. There's also a reference under Coverage C -- which

1 that's the contents section; is that correct?

2 A. Yes.

3 Q. That's the contents policy. "Dr. Borden is
4 researching the issue of carcinogens caused by the fire." Is
5 that correct?

6 A. That's correct.

7 Q. So you were aware that that was a concern that
8 Dr. Borden had expressed; is that right?

9 A. That's correct.

10 Q. And you attempted to get some information about
11 carcinogens; is that right?

12 A. That's correct.

13 Q. You went through, I think, one of your vendors, I
14 think the Dry Cleaning Restoration Network or something like
15 that, in order to get information about the carcinogens that
16 may remain on fire-damaged clothes or fire-damaged contents
17 or even in the structure; is that right?

18 A. That's correct.

19 Q. And I think your words were, they kind of dropped
20 the ball, they didn't get back to you?

21 A. That's correct.

22 Q. And that was the only investigation you did on that
23 issue; is that correct?

24 A. That's correct.

25 Q. So as of this time, March 3rd, when you sent that

1 e-mail to Ms. St. Onge, you knew that the public adjuster's
2 estimate was going to be considerably more than
3 Mr. Schumann's?

4 A. Yes.

5 Q. Although you didn't have the physical estimate at
6 that time?

7 A. I don't believe so.

8 Q. Now, you had indicated before that you need
9 authority from time to time from Lisa St. Onge for certain
10 payments in certain cases, and in this case you had asked
11 Ms. St. Onge to give you the authority to make the payment
12 based on Mr. Schumann's estimate; is that right?

13 A. Yes.

14 Q. And she sent you an e-mail, dated March 7 of 2003,
15 which gave you that authority; is that right?

16 A. Correct.

17 Q. At this time you still don't have any -- we had
18 already talked about the knowledge that you had of Seifert
19 and Visions and that sort of thing, and you testified a
20 couple minutes ago that ultimately you did talk to
21 Mr. Seifert. As of this time, March 7th, you didn't have any
22 information about Visions, correct?

23 A. I believe that's correct.

24 Q. And Ms. St. Onge then asked you to obtain an
25 estimate from Visions or confirmation in writing that they

1 agreed to John's scope; is that right?

2 A. That's correct.

3 Q. And then she also asked you to obtain more
4 information, how large of a company, do they normally handle
5 this type and size of loss, and how many years have they been
6 in business, correct?

7 A. That's correct.

8 Q. Did Ms. St. Onge talk to you, other than this, to
9 tell you why it was that she felt it was important to find
10 out about Visions?

11 A. I don't remember that.

12 Q. Now, you did talk to Visions, as you've said before,
13 and you got some information from them, but -- I don't mean
14 to repeat myself, but you didn't talk to anybody else?

15 A. That's correct.

16 Q. Other than Brian Seifert of Visions?

17 A. That's correct.

18 Q. He had told you that he had been in business for a
19 couple years? Since like 2000, I think?

20 A. I think he said that he'd been incorporated since
21 2000, but he'd been in the business his entire life.

22 Q. He had worked for his dad?

23 A. Yes.

24 Q. Did he tell you that he was a roofer?

25 A. No.

1 Q. Did he tell you he was a dry waller?

2 A. No.

3 Q. Did he tell you he did concrete work?

4 A. No.

5 Q. Did he tell you he plowed snow?

6 A. No.

7 Q. How much was Mr. Seifert and Visions paid throughout
8 the life of this?

9 A. I have no idea offhand.

10 Q. Is this the only case you've ever worked with
11 Visions?

12 A. Yes.

13 Q. In the same e-mail of March 7, 2003, in the last
14 paragraph, Ms. St. Onge tells you, does she not, "It appears
15 we may be heading toward appraisal." Is that correct?

16 A. That's what it says.

17 Q. Had you ever participated in an appraisal before?

18 A. No.

19 Q. That was -- how many years you've been in the
20 insurance business?

21 A. As of today, 25 years.

22 Q. Literally today?

23 A. No. Within the past few months.

24 Q. I was going to congratulate you.

25 THE COURT: 25 candles.

1 THE WITNESS: Just means I'm old.

2 Q. Just means you're experienced. So you had never
3 been involved in an appraisal before?

4 A. No.

5 Q. Now, did you talk to Ms. St. Onge -- strike that.
6 Did you have a conversation with Ms. St. Onge separate and
7 apart from that e-mail about why it was she thought the case
8 was going to appraisal?

9 A. Not that I recall.

10 Q. At that time did you think that the case was headed
11 towards appraisal?

12 A. I can't recall.

13 Q. I then have an exhibit marked 3-15, dated March 11,
14 2003. This is another letter from you to the Bordens; is
15 that correct?

16 (Plaintiff's Exhibit No. 3-15 marked for
17 identification.)

18 A. That's correct.

19 Q. And in this letter you are enclosing a check in the
20 amount of \$295,000--something, which represents the actual
21 cash value based on the \$328,000 estimate, correct?

22 A. Correct.

23 Q. And you understand that the Bordens don't have any
24 dispute that the holdback is totally legitimate and that was
25 the amount -- assuming that Schumann's estimate was accurate,

1 that was the amount they were owed?

2 A. Not that was presented to me.

3 Q. And up to this day nobody's said there's anything
4 wrong with that. But this payment is based on Schumann's
5 estimate; is that correct?

6 A. Correct.

7 Q. Is there anywhere in this letter where it indicates
8 that this is a preliminary estimate?

9 A. No.

10 Q. Is there anywhere in this letter that says that this
11 offer is negotiable in some way?

12 A. No. I've never done that.

13 Q. That wasn't my question. My question was whether
14 this letter indicates that at all. So you would agree with
15 me that this letter doesn't indicate anywhere that this offer
16 is open to further discussion, correct?

17 A. Does not say that.

18 Q. Now, also in this letter you make a reference to a
19 policy provision -- again, this is Exhibit 3-15, letter of
20 March 11, 2003. You make a reference to a policy provision
21 called duties after loss; is that correct?

22 A. That's correct.

23 Q. What was the purpose for that?

24 A. Can I read the rest of it?

25 Q. Yes. Take your time.

1 A. Isn't there a Page 2?

2 Q. Yes. There you go. Sorry about that.

3 A. The concern was the basement. Nothing was being
4 done.

5 Q. You mean that the Bordens hadn't started repairs
6 yet?

7 A. They hadn't done anything with the basement. And I
8 think that letter, on Page 2, also referenced their
9 obligation to prepare an inventory of the contents, which
10 they had not done.

11 THE COURT: Would you put the front page on for a
12 minute.

13 Q. Now, they had hired Mr. Parise by that time; is that
14 correct?

15 A. What's the date of the letter?

16 Q. March 11th.

17 A. I had -- I don't know if I received anything from
18 Mr. Parise at that point.

19 Q. But you had already --

20 A. But I was aware of that.

21 Q. Because you had already reported to Lisa St. Onge --

22 A. Yes.

23 THE COURT: I have to ask a question. Mr. Bennett,
24 is the actual cash value of \$295,098.92 completely
25 independent of the repair estimate of \$328,999.14?

1 THE WITNESS: What do you mean by "completely
2 independent"?

3 THE COURT: What I mean is that the actual cash
4 value is not, and was not, affected at all by the estimate as
5 to what it would actually cost to put the thing back in its
6 prefire condition; is that correct?

7 THE WITNESS: It's based upon -- it's actually a
8 line item on the estimate, and then each particular line item
9 of an estimate, whether it be dry wall, paint, there's an
10 adjustment for the depreciation of that item. So it's based
11 on line -- item by item of the replacement cost estimate.

12 THE COURT: I appreciate that. Let me ask you a
13 question, Mr. Murphey, maybe this will clear this up for me.
14 Is there a dispute in this case as to the reasonableness of
15 the actual cash value figure?

16 MR. MURPHEY: No. Only as it relates to the -- as I
17 understand it, that the actual cash value would be,
18 functionally, a percentage of the total loss. So the total
19 loss should have been much higher; therefore, the actual cash
20 value would have been much higher. But we don't have any --
21 and I think you understand this, Your Honor, we don't have
22 any dispute that they are entitled to pay only the actual
23 cash value at this time, and then they're supposed to pay the
24 remainder once the repairs are done and the insured can prove
25 that they spent that much money.

1 THE COURT: But the point is, you don't have a
2 complaint with a piecemeal payment?

3 MR. MURPHEY: No. The complaint is with the overall
4 estimate at that time, and then the payment is based on that
5 overall estimate.

6 THE COURT: We're going to take a few minutes, and
7 then we'll come back.

8 (Pause in the proceedings.)

9 Q. Mr. Bennett, we were talking about the letter of
10 March 11, 2003 in which you included a provision of the
11 policy, which is called "Duties After a Loss," and in this
12 letter you told the Bordens that their policy had a provision
13 that said, "In case of a loss to covered property, we have no
14 duty to provide coverage under this policy if the failure to
15 comply with the following duties is prejudicial to us." And
16 on Page 2, one of those following duties was to protect the
17 property from further damage, which would include making
18 reasonable and necessary repairs to protect the property; is
19 that correct?

20 A. That's correct.

21 Q. What was Brian Seifert doing? What was Visions
22 doing at the scene?

23 A. Visions did the board-up.

24 Q. And they continued to be at the scene; is that
25 correct?

1 A. Yes. We didn't have them do anything beyond that.

2 Q. Were the Bordens ever told that Brian Seifert wasn't
3 doing anything more than the board-up?

4 A. I don't believe so.

5 Q. Thank you. Now, later that week the Bordens
6 returned the \$295,000 check that you had sent to them; is
7 that right?

8 A. They returned it, I remember.

9 Q. And then, later they did take it from you after you
10 had explained to them that it was not a release of their
11 claim and that further discussions could ensue; is that
12 right?

13 A. I don't believe I would characterize it in that
14 manner.

15 Q. Did they ultimately take the check?

16 A. Yes. It was sometime after that.

17 Q. Was it after you explained to them that it was not a
18 release?

19 A. It was also after --

20 Q. I'm sorry, sir, I don't mean to interrupt you. It's
21 a yes or no question. Did they return the check after you
22 told them --

23 A. Yes.

24 Q. -- that it was not a release of your claim?

25 A. Yes.

1 THE COURT: Did they accept the check after or did
2 they return the check?

3 MR. MURPHEY: They returned the check, and then
4 Amica explained to them that it wasn't a release and then
5 they accepted the check.

6 A. It was sometime later, yes.

7 Q. That's right. But it was after you told them that
8 it was not a release?

9 A. Correct.

10 Q. In fact, you sent them a separate letter, dated
11 March 25, 2003, which I have marked Exhibit 3-19, this is
12 directed to the public adjuster who's involved, and in the
13 first paragraph you say, "I would like you to understand that
14 issuance of this check is not a release of the claim." Is
15 that right?

16 (Plaintiff's Exhibit No. 3-19 marked for
17 identification.)

18 A. That's correct.

19 Q. Now, in a March 21st e-mail to Lisa St. Onge, you
20 reported to her --

21 THE COURT: What's the exhibit?

22 MR. MURPHEY: Exhibit 3-17, Your Honor.

23 (Plaintiff's Exhibit No. 3-17 marked for
24 identification.)

25 Q. You reported to her that Mr. Schumann had said that

1 the Bordens had refused to accept dry cleaning which had been
2 delivered to their house; is that correct?

3 A. That's correct.

4 Q. And that the Bordens had expressed concern for their
5 child's allergies; is that correct?

6 A. That's correct.

7 Q. And that Visions does not have the facility to store
8 these items; is that correct?

9 A. That's correct.

10 Q. So Schumann had instructed the dry cleaners to store
11 the dry cleaning in the insureds' garage; is that correct?

12 A. That's correct.

13 Q. At this point in time did you have any concern at
14 all about Visions given the fact that you had just been told
15 that they did not have facilities to store the items that had
16 got cleaned?

17 A. I had concerns about the lack of storage, yes.

18 Q. Typically, when you work with fire restoration
19 contractors, they have warehouse and storage facilities that
20 can handle a significant loss like this; is that right?

21 A. Yes.

22 Q. In that same e-mail -- to be fair to you, this is
23 the e-mail that you sent to Lisa St. Onge in which you
24 describe your conversation with Brian Seifert, under Coverage
25 A, about Visions Corporation and their experience; is that

1 right?

2 A. Yes.

3 Q. This is when he told you that they'd been in
4 business since 2000, that he had grown up in the business and
5 worked for his father, et cetera; is that right?

6 A. That's correct.

7 Q. It indicates that they do work for State Farm and
8 Farmers Insurance, but you didn't follow up with State Farm
9 or Farmers, right?

10 A. No.

11 Q. And it said that they had done work up to \$300,000
12 in the past. You didn't get any more information about that,
13 did you?

14 A. No.

15 Q. You've never seen a house that they rebuilt or
16 repaired?

17 A. No.

18 Q. Now, on March 23, 2003, Mr. Parise sent you a letter
19 with a five-page report and a 55-page estimate. Do you
20 remember receiving that?

21 A. Yes.

22 Q. When I said, "you," I see the letter was sent to
23 Mr. Schumann, but it was copied to you; is that correct?

24 A. I received a copy, yes.

25 Q. Now, did you read the report?

1 A. Yes.

2 Q. Did you read the estimate?

3 A. I'm sure I did.

4 Q. Did you compare the estimate to Mr. Schumann's?

5 A. No, I -- I don't know for sure.

6 Q. Did you identify the areas in which Mr. Parise felt
7 that Mr. Schumann's estimate was light?

8 A. I think Mr. Parise highlighted that.

9 Q. In his report?

10 A. Yes.

11 Q. That March 23rd report. I take it that you -- from
12 your answers that you don't remember doing a side-by-side
13 comparison between the Parise estimate and the Schumann
14 estimate?

15 A. I don't recall.

16 Q. Did the receipt of Parise's report and estimate
17 cause Amica to make any additional payment at that time?

18 A. No.

19 Q. No additional payment, in fact, ever came in this
20 case until after Mr. Jones had done his estimate --

21 A. That's correct.

22 Q. -- in July; is that right?

23 A. That's correct.

24 Q. Now, in his report of March 23rd, which is Exhibit
25 3-18, on the third page of that exhibit, which is marked with

1 Bates stamp AM558, Mr. Parise reported to you that
2 Mr. Seifert was no longer comfortable with Mr. Schumann's
3 estimate; is that accurate?

4 (Plaintiff's Exhibit No. 3-18 marked for
5 identification.)

6 A. That's what it says.

7 Q. Did you follow up with Mr. Seifert to discuss the
8 areas in which he now apparently disagreed with
9 Mr. Schumann's estimate?

10 A. The date of our meeting with Seifert, Mr. Parise,
11 and Mr. Schumann and I, I discussed that with Mr. Seifert.

12 Q. That was on the April 15th meeting?

13 A. Correct.

14 Q. What did Mr. Seifert say?

15 A. He characterized it differently than what Mr. Parise
16 had said. He told us, once again, that he thought the work
17 could be done for Schumann's estimate.

18 Q. You'll agree with me that Mr. Parise told you that
19 Mr. Seifert said that --

20 THE COURT: Where does it say that?

21 MR. MURPHEY: I'm sorry?

22 THE COURT: Are you referring to the content of the
23 letter for that proposition? I'm sorry, let me roll the tape
24 back. Were you indicating that it says somewhere in here
25 that Mr. Seifert indicated he could no longer do the work for

1 that cost? I'm confused.

2 MR. MURPHEY: Yes.

3 THE COURT: Where does it say that?

4 MR. MURPHEY: What I actually asked the witness,
5 Your Honor, was whether this letter indicated that Seifert
6 was uncomfortable with Schumann's estimate. That's the way I
7 phrased the question. And Mr. Bennett said, yes.

8 THE COURT: Where does it say that?

9 Q. "I questioned Visions as to why neither they nor
10 Amica took the time to open the walls to verify smoke
11 penetration, it was explained he was not directed to do so.
12 When I questioned him on whether he could repair the home and
13 guarantee a smoke-free house, at this point he stated, not
14 for the estimate as it currently is." And you took it -- I
15 know your testimony is regarding a later conversation with
16 Mr. Seifert, but at that time you took it that Mr. Parise, at
17 least, was reporting to you that Mr. Seifert was no longer
18 comfortable with Mr. Schumann's estimate?

19 A. That's correct.

20 Q. And you'll agree with me that a smoke-free house is
21 what Amica's responsible to pay for?

22 A. That's the goal.

23 Q. Now, you did not talk to Mr. Seifert about that when
24 you received it, but you did later talk to him on April 15th
25 when you met at the house?

1 A. A few weeks later.

2 THE COURT: Keep your voice up, please.

3 Q. Now, on March 25th, you sent the letter that we
4 looked at a minute ago, which is marked as Exhibit 3-19. And
5 we talked about the fact that you are now telling the Bordens
6 that the check is not a release of the claim. You also
7 addressed another item in the last paragraph, did you not, in
8 which you say, "According to VIP Cleaners," which was the dry
9 cleaner in Erie, "these items have been cleaned according to
10 industry standards, and we disagree with the contention that
11 they were not cleaned satisfactorily." Is that correct?

12 A. Correct.

13 Q. At that time had you seen any of the clothes?

14 A. No.

15 Q. Do you know if Mr. Schumann had?

16 A. I don't believe so.

17 Q. So the information that you had was from VIP
18 Cleaners?

19 A. Correct.

20 Q. And an employee of VIP cleaners later told you that
21 the clothes did smell of smoke; didn't he?

22 A. Yes.

23 Q. And later you ultimately saw the clothes and you
24 agreed that at least some of them smelled of smoke?

25 A. That's correct.

1 Q. And some of them continued to be stained; is that
2 correct?

3 A. That's correct.

4 Q. So ultimately you agreed to pay for the clothes?

5 A. We paid for the dry cleaning, and ultimately we paid
6 for all the contents.

7 Q. Now, in this letter, when you are telling Mr. Parise
8 that the items had been cleaned according to industry
9 standards and we disagree with the contention they were not
10 cleaned satisfactorily, you were telling the Bordens that
11 they needed to accept the clothes; is that right?

12 A. I was telling them what the letter says, my
13 understanding of the dry cleaning. I would expect, in a fire
14 loss, that some items would not clean and some items would.
15 They were saying that they wouldn't accept any of them.

16 Q. But you didn't know -- I mean, you're talking about
17 clothes that had been delivered to the Bordens' house, and
18 you said that you talked to VIP Cleaners and they said they'd
19 been cleaned according to industry standards, and we disagree
20 that they weren't cleaned satisfactorily?

21 A. That's correct.

22 Q. Were you telling the Bordens they needed to accept
23 the clothes that had been delivered to the house?

24 A. I was saying I was disagreeing with their total
25 rejection of the dry cleaning.

1 Q. So you didn't say that you can reject some and
2 accept others?

3 A. I didn't say that.

4 Q. But that's what you meant?

5 A. That's what I meant.

6 Q. At this time, when you were telling the Bordens that
7 it was Amica's opinion that the clothes had been cleaned
8 satisfactorily, they were stored in the Bordens' garage in
9 the fire-damaged house; is that right?

10 A. At some point they were, I don't know exactly when
11 that was.

12 Q. Now, sometime later you received a letter from
13 Mr. Parise dated April 6, 2003, and this letter was sent
14 directly to you; is that correct?

15 A. Yes.

16 Q. And in this letter Mr. Parise told you, at the
17 bottom of Page 1 on Exhibit 3-23, "After our joint
18 inspection, Mr. Seifert explained he originally thought
19 Mr. Schumann's estimate was reasonable, but after our joint
20 inspection, he couldn't repair the home or guarantee a
21 smoke-free home with the estimate as it is. I explained to
22 Mr. Seifert the scope of repairs that I was proposing, and he
23 agreed it was necessary to rid the home of the smoke." Did I
24 read that correctly?

25 (Plaintiff's Exhibit No. 3-23 marked for

1 identification.)

2 A. I believe so.

3 Q. So, again, at this point, when you received the
4 April 6th letter from Mr. Parise, it was your understanding
5 that Mr. Seifert had now backed off of his support of
6 Mr. Schumann's estimate, and actually, at least if you
7 believe Mr. Parise, agreed that Mr. Parise's scope of the
8 work was necessary?

9 A. That's what Mr. Parise was saying.

10 Q. And again, you talked to Seifert maybe -- on April
11 15th, but you didn't talk to him upon receipt of that letter?

12 A. I don't remember the date that you said the letter
13 was.

14 Q. The letter was April 6th.

15 A. It was dated April 6th?

16 Q. It was dated, and I'm not sure when you received it.
17 But the bottom line is, you discussed this with Mr. Seifert
18 on April 15th --

19 A. Correct.

20 Q. -- and at no time prior?

21 A. That's correct.

22 Q. In that letter of April 6th, Mr. Parise suggested
23 that a meeting be held among the adjusters in the case; is
24 that right?

25 A. That's correct.

1 Q. And you agreed to participate in that meeting; is
2 that right?

3 A. Yes.

4 Q. And the meeting involved Mr. Parise, Mr. Schumann,
5 Mr. Seifert, and yourself; is that right?

6 A. The letter suggested that Dr. Borden be present,
7 too, I believe, and he was not there.

8 Q. He was not there. Mr. Parise was there on his
9 behalf?

10 A. Yes.

11 Q. And this was your first visit to the scene of the
12 fire; is that right?

13 A. Yes. That's correct.

14 Q. It was your first meeting with Mr. Parise; is that
15 correct?

16 A. Yes.

17 Q. And Mr. Parise was very nice?

18 A. Very pleasant, professional.

19 Q. Very professional. And very knowledgeable; is that
20 right?

21 A. Seemed so to me.

22 Q. You'll agree that the morning of that meeting,
23 again, April 15th of 2003, was spent touring the house?

24 A. Yes.

25 Q. And then, later in the day you went and looked at

1 some contents and did other stuff?

2 A. Yes.

3 Q. But it was the morning that I wanted to focus on.
4 Do you recall that Mr. Parise kicked holes in the wall?

5 A. There were holes in the wall. I didn't see him kick
6 any holes.

7 Q. Do you know whether Mr. Schumann had created the
8 holes in the wall?

9 A. I don't believe he did.

10 Q. Do you know if Mr. Schumann created any holes in the
11 walls anywhere in the house?

12 A. Not to my knowledge.

13 Q. Do you know what the purpose was of Mr. Parise
14 putting holes in the wall?

15 A. He was looking for smoke.

16 Q. Do you recall Mr. Schumann saying that the soot and
17 smoke smell inside the walls could be covered up with sealer
18 and paint?

19 A. I'm sorry, can you restate that.

20 Q. Yes. Do you remember Mr. Schumann, at any time of
21 this meeting on April 15th, saying to Mr. Parise that
22 although there might be smoke or soot in the walls, that it
23 could be covered up by sealer and paint?

24 A. I believe what he felt was --

25 Q. I'm sorry, I don't mean to interrupt you. What I'm

1 asking is, what do you remember Mr. Schumann saying at that
2 time?

3 A. I don't remember exactly what he said.

4 Q. Do you recall him saying anything -- I'm sorry,
5 strike that. Do you personally recall observing any black
6 substance of any kind in the insulation or anywhere else
7 behind the walls?

8 A. Yes.

9 Q. Do you recall Mr. Schumann seeing black substance
10 behind certain walls?

11 A. Yes.

12 Q. Do you recall Mr. Schumann saying to Mr. Parise that
13 although that might be soot, how do we know that it was
14 caused by this fire?

15 A. I'm not sure of him saying that. He may have said
16 that.

17 Q. Do you remember him saying that?

18 A. I remember something about that, I don't remember
19 specifically. I'm sorry.

20 Q. Do you remember observing a smoke smell when Mr.
21 Parise was showing you the holes in the wall?

22 A. I do remember I smelled the insulation, and I did
23 not smell any smoke.

24 Q. Did you smell any smoke at all when you were on the
25 second floor of the house?

1 A. I'm sure I did.

2 Q. You're sure you did?

3 A. Yes.

4 Q. There was a smoke smell that pervaded the house; is
5 that right?

6 A. Yes.

7 Q. That would include the first floor and the second
8 floor?

9 A. I believe so.

10 Q. Do you recall Mr. Parise inviting Amica at -- during
11 that meeting, Mr. Parise suggesting that Amica bring in
12 another contractor to take a look at the loss?

13 A. I don't remember that, I'm sorry.

14 Q. Did the tour of the house that morning convince you
15 that Mr. Schumann's estimate was too low?

16 A. It convinced me that he missed items, sure.

17 Q. What do you remember that he missed?

18 A. Tile flooring, and I think a countertop, there was
19 an issue with that.

20 Q. You mean like he had misidentified a tile floor as
21 some less expensive product?

22 A. Yes.

23 Q. And he had misidentified a countertop as some less
24 expensive product?

25 A. Yes.

1 Q. Do you remember reaching any conclusion as to by how
2 much Mr. Schumann's estimate was too low?

3 A. I don't remember, no.

4 Q. Do you remember Mr. Schumann telling you that he
5 agreed that his estimate was probably at least \$20,000 too
6 low?

7 A. It's something I recall. I don't know -- I had
8 heard the \$20,000 figure, I'm not sure exactly when that was.

9 Q. So you don't recall Mr. Schumann telling you that at
10 the scene?

11 A. I don't remember, I'm sorry.

12 Q. Mr. Bennett, you created a note for your file to
13 document what had occurred at the April 15th meeting, did you
14 not?

15 A. Yes, I did.

16 Q. I'm showing you a document which did not make it
17 into your exhibits, it's dated April 30, 2003, and it is a
18 memo to the file, which I believe you testified you created
19 in order to document what had happened at the April 15th
20 meeting. Do you remember that?

21 A. Yes.

22 Q. So do you recognize this as a memo to file?

23 A. Yes.

24 THE COURT: Has this been identified?

25 MR. MURPHEY: It is a memo dated April 30, 2003 --

1 THE COURT: Exhibit-wise?

2 MR. MURPHEY: It doesn't have an exhibit number.

3 THE COURT: Let's give it one now.

4 Q. I'll mark this as Exhibit 8. It's a two-page
5 document. Just for purposes of the record, could you
6 identify this two-page document that I've marked as Exhibit
7 8.

8 (Plaintiff's Exhibit No. 8 marked for
9 identification.)

10 A. It's a report to file dated April 30, 2003.

11 Q. That you generated and would be part of your claim
12 file?

13 A. Yes.

14 Q. Thank you. I'm going to read the last paragraph,
15 and you tell me if I'm reading it correctly, "After spending
16 a half a day with the public adjuster, it was apparent that
17 we were not going to be able to bridge the difference between
18 our general adjuster's estimate of \$327,999.14 compared to
19 the public adjuster's estimate of \$680,492.21. I discussed
20 with our adjuster the issues brought forth by the public
21 adjuster on the areas he missed and not included in his
22 estimate. Schumann felt these were small issues and fully
23 expects a supplement of \$20,000." Did I read that correctly?

24 A. Yes, you did.

25 Q. Did you tell the Bordens that Amica's offer was

1 going to increase by \$20,000?

2 A. At that time, no.

3 Q. And you didn't tell Mr. Parise that the estimate was
4 going to be increased, right?

5 A. No.

6 Q. Instead, what you did was, over the noon hour that
7 day you contacted Amica's home office and you received
8 instructions to invoke the appraisal clause of the contract;
9 is that right?

10 A. That's correct. It was determined --

11 Q. Well --

12 A. Sorry.

13 THE COURT: I need more than that.

14 MR. MURPHEY: That's fine.

15 THE COURT: Go ahead and explain.

16 A. It was determined that the wide variance between
17 Mr. Parise's estimate and Mr. Schumann's estimate they didn't
18 feel they would be able to bridge the difference. As far as
19 issuing the \$20,000 payment, at that point Dr. Borden had
20 sent both those checks back, so I didn't really feel that
21 issuing a supplemental payment for \$20,000, given the
22 monumental differences between the two estimates, was going
23 to make much difference.

24 Q. Did you tell them, though, that your estimate would
25 increase by \$20,000?

1 A. I don't believe so.

2 Q. That's a different question. You didn't tell them
3 that?

4 A. No.

5 Q. When you called the home office and received
6 instructions to invoke the appraisal, did you discuss with
7 the people at the home office any other options such as
8 hiring another contractor to come in and take a look at the
9 loss or further negotiating with Mr. Parise?

10 A. No.

11 Q. Now, after the April 15th meeting, you received a
12 copy of an Insurance Department complaint, which was made by
13 the Bordens; is that correct?

14 A. That's correct.

15 MR. GEER: Objection. Can I ask for an offer what
16 we're going to do with this because we will -- are we going
17 to talk about the complaint, are we going to talk about the
18 insurance company's response or the insurance commissioner's
19 response? Because I don't see how it's germane to anything.

20 MR. MURPHEY: My purpose for offering it is that it
21 has a specific discussion of what happened at the April 15th
22 meeting bringing to Amica's attention what the Bordens'
23 position was. And, of course, our entire case is about the
24 fact that Amica was provided information that their estimate
25 was too low and they didn't do anything about it. So the

1 Insurance Department complaint is just another piece of
2 information --

3 THE COURT: This is a complaint prepared by the
4 Bordens and sent to the Insurance Department?

5 MR. MURPHEY: And copied to Amica.

6 THE COURT: Now, what's your objection again,
7 Mr. Geer?

8 MR. GEER: I don't see that there's any dispute
9 here. Mr. Murphey seems to be saying that this is germane
10 because it makes it clear that he understood what the dispute
11 was. But unless there's something in there that's different
12 than what Mr. Bennett just said, I think he said it was
13 pretty clear he understood what the dispute was.

14 THE COURT: Is it your position that Amica was
15 motivated, in part, by the Insurance Department complaint?

16 MR. MURPHEY: They may have been.

17 THE COURT: Put it this way: It may have some
18 marginal relevance, but we're not going to spend an
19 inordinate amount of time litigating that aspect of it
20 because we don't have to. So I'll overrule the objection.

21 Q. I'm showing you a copy of the Insurance Department
22 complaint, which has been marked Exhibit 3-25. Do you
23 recognize this?

24 (Plaintiff's Exhibit No. 3-25 marked for
25 identification.)

1 A. Yes, I do.

2 Q. I'm going to refer to Page 3 of the document.

3 THE COURT: Is it possible to make that a little bit
4 bigger?

5 MR. MURPHEY: How's that?

6 THE COURT: That's better.

7 MR. MURPHEY: Want it bigger?

8 THE COURT: Can you see that okay, sir?

9 THE WITNESS: Yes.

10 Q. You will agree with me that the letter contains a
11 description of, the Bordens' version anyway, the April 15th
12 meeting; is that correct?

13 A. That's correct.

14 Q. In this letter, on the third line that I have
15 highlighted, it says, "Amica acknowledged that soot is in the
16 walls." Did that happen at the meeting?

17 A. There was a black substance about the width of a
18 magic marker on the -- on one section of the fiberglass
19 insulation that I saw.

20 Q. What about Mr. Schumann?

21 A. He saw the same thing.

22 Q. Do you know whether Mr. Schumann saw any other
23 evidence of soot?

24 A. I'm not aware of that.

25 Q. You don't know one way or another?

1 A. I'm not sure.

2 Q. Is it accurate, though, when the Bordens say, "Amica
3 acknowledged that soot is in the walls."? Is that accurate?

4 A. It's accurate to the extent that there was -- that
5 we saw some black mark on the insulation. What that was, I
6 don't know. We're assuming it was soot.

7 Q. I'm just trying to determine whether the Bordens
8 were telling the truth when they said that Amica acknowledged
9 that soot is in the walls.

10 A. We didn't know for sure what it was, but it seems
11 reasonable to assume that.

12 Q. Because of the fire that happened two months before?

13 A. Yes. Yes.

14 Q. The next sentence says, "First they stated that the
15 soot was not a problem because the house would not smell."
16 Did Amica -- and when I say "Amica," of course, I'm meaning
17 either you or Mr. Schumann. Did either of you say that the
18 soot was not a problem because the house would not smell?

19 A. I don't remember that specific statement, but it was
20 Schumann's contention that the method of repair that he was
21 proposing would take care of that problem.

22 Q. Again, see the sentence that I have my finger on, it
23 says, "Amica has stated that we should just leave it there."
24 Did you or Mr. Schumann tell them that your contention was
25 that you should just leave the soot in the walls?

1 A. It was Schumann's contention that the house in that
2 section did not need to be gutted. So the insulation would
3 be left there.

4 Q. So it's accurate for the Bordens to have said that
5 was Amica's position that it should just be left there?

6 A. Yes.

7 Q. The Bordens also said, "The Amica representative at
8 one point said, how do we know the soot wasn't there prior to
9 the fire." And you recall that being said, but you're not
10 sure who said it? Is that what you told me?

11 A. I'm sure it was said. I don't know -- I can't
12 remember specifically three years later.

13 Q. But you're sure it was said?

14 A. I'm sure it was.

15 Q. The next sentence says, "Our consultant pointed out
16 smoke under tubs and within electrical outlets, but the Amica
17 representatives stated we should not be concerned with soot
18 in those places." Do you remember you or Mr. Schumann
19 stating that?

20 A. I don't remember that, no.

21 Q. As we sit here, do you know that it wasn't said or
22 you just don't remember?

23 A. I don't remember it being said. I mean, I saw soot
24 underneath the hot tub. It was there.

25 Q. There was a lot of it, right?

1 A. Yes, there was.

2 Q. Now, after the April 15th meeting you wrote to the
3 Bordens and you invoked the appraisal clause; is that
4 correct?

5 A. Yes.

6 Q. You said that you had never done that before in your
7 career.

8 A. Never.

9 Q. Did you give the Bordens a chance to demand
10 appraisal first?

11 A. They had every chance at any point in time to do it,
12 sure.

13 Q. Did you tell them, we're thinking about appraisal,
14 do you want to invoke the appraisal clause?

15 A. No.

16 Q. And you appointed a gentleman named Jack Owens to
17 serve as Amica's appraiser?

18 A. That's correct.

19 Q. At the same time you also hired Mr. Owens to serve
20 as Amica's adjuster on the contents portion of the claim?

21 A. That's what was said, yes.

22 Q. And you disagreed with that, didn't you?

23 A. I do.

24 Q. You thought that was a bad idea?

25 A. Yes.

1 Q. So that put Mr. Owens, essentially, on Amica's
2 payroll both as an appraiser on the property part and as an
3 adjuster on the property part?

4 A. He never did any adjustment of the contents part.

5 Q. I understand that, but that's what you did, though.
6 You hired him to do it, I know he didn't ultimately do it
7 because you changed your mind. But when Mr. Owens was
8 appointed to serve as your appraiser, you also hired him to
9 adjust the contents?

10 A. I don't know exactly when it was, but, yes, that was
11 done.

12 THE COURT: When you say "you," who do you mean?

13 MR. MURPHEY: I'm referring to Amica.

14 THE COURT: Mr. Bennett, were you the person who
15 hired Mr. Owens to serve as your adjuster?

16 THE WITNESS: We hired him to serve as our --

17 THE COURT: Appraiser, rather.

18 THE WITNESS: -- appraiser, and at some point I was
19 instructed to ask him to resolve the contents issue.

20 THE COURT: So you passed that request on to him as
21 well?

22 THE WITNESS: Yes, I did.

23 THE COURT: Go ahead.

24 Q. And you, by your demeanor and by the testimony you
25 had given before, disagreed with that? You thought they

1 should have been separate?

2 A. That's correct.

3 Q. That somebody else should have been hired or just
4 maybe your office handle the contents while Mr. Owens was
5 exclusively the appraiser?

6 A. That's what happened. I handled it.

7 Q. That's what happened ultimately, right?

8 A. Yes.

9 Q. Anyway, you were saying you weren't sure of the time
10 frames. I'm showing you a letter dated May 6, 2003, which is
11 Exhibit 3-28, and this is a letter from you to Mr. Owens; is
12 it not?

13 (Plaintiff's Exhibit No. 3-28 marked for
14 identification.)

15 A. Yes, it is.

16 Q. Mr. Owens was your appraiser, correct?

17 A. That's correct.

18 Q. The first sentence in the letter says, "This will
19 confirm our request for you to act as our appraiser in the
20 above-captioned fire loss," correct?

21 A. Correct.

22 Q. And the last sentence -- or the next to last
23 sentence of the letter says, "I would like your services to
24 include adjustment of the contents claim with Giordano &
25 Associates." Is that right?

1 A. That's what the letter says, yes.

2 Q. I know that you made it very clear that you didn't
3 think it was a good idea. Why didn't you think it was a good
4 idea?

5 A. He loses his impartiality. I think the original --

6 Q. That was my question, what you were concerned about.
7 Thank you.

8 Now, you wrote to the Bordens and asked them to
9 appoint their appraiser, and you wrote to them a couple of
10 times, and then you received a letter from Attorney Terry
11 Jones, who indicated that he was going to represent the
12 Bordens with respect to further handling this claim; is that
13 right?

14 A. That's correct.

15 Q. And at that time Mr. Jones also appointed Mr. Parise
16 to serve as the Bordens' appraiser, correct?

17 A. That's correct.

18 Q. And Amica objected to that because Mr. Parise was,
19 in Amica's words, not impartial because of his existing
20 relationship with the Bordens on the claim?

21 A. That's correct.

22 Q. But at that time Amica did not tell the Bordens that
23 Mr. Owens had been retained by Amica to adjust the contents
24 part of the claim?

25 A. That's correct.

1 Q. So you didn't tell them that you had the
2 impartiality -- same impartiality concerns with Mr. Owens
3 that you did with Mr. Parise?

4 A. No.

5 Q. No, you didn't tell them that?

6 A. No, I did not tell them.

7 Q. Now, after Mr. Jones sent you a letter indicating
8 that he was going to represent the Bordens, Amica retained
9 Mr. Geer; is that correct?

10 A. My memory is we retained him before that.

11 Q. The first letter that appears in the file from
12 Mr. Geer is dated May 28, 2003. It's Exhibit 3-34. Do you
13 recognize this?

14 (Plaintiff's Exhibit No. 3-34 marked for
15 identification.)

16 A. Yes.

17 Q. And this indicates, "Amica has retained our firm to
18 represent Amica in this matter." Is that correct?

19 A. That's correct.

20 THE COURT: I'm sorry, I missed that. Who was that
21 from or to?

22 MR. MURPHEY: It's from Mr. Geer to Terry Jones.
23 Terry Jones is representing the Bordens, and Mr. Geer is
24 representing Amica now.

25 THE COURT: What's the date of the letter?

1 MR. MURPHEY: May 28, 2003. It's Exhibit 3-34.

2 Q. I'm referring to Page 2 of the letter -- and I note
3 on Page 3, Mr. Bennett, that you were copied with this
4 letter; is that correct?

5 A. That's correct.

6 Q. I note on the second page of this letter, the
7 highlighted paragraph, Mr. Geer is explaining the concerns
8 that Amica has with respect to Mr. Parise serving as the
9 Bordens' appraiser; is that right?

10 A. That's correct.

11 Q. And then, the paragraph below -- the first
12 highlighted paragraph states, "The appraiser appointed by
13 Amica, Jack Owens, has never previously worked for Amica and
14 has done no previous work on this file. I believe his
15 qualifications as a claims adjuster are beyond question or
16 dispute." Did I read that correctly?

17 A. Yes.

18 Q. Did you tell Mr. Geer -- strike that. At any point
19 did you tell the Bordens that Mr. Owens was also adjusting
20 the claim in addition to serving as the appraiser?

21 A. No. But he did not actually adjust the claim.

22 Q. I understand that. But you did not tell them that
23 he had been hired to do that?

24 A. No.

25 Q. The letter of -- the letter of May 28, 2003, which

1 is marked as Exhibit 3-34, that we were just referring to,
2 also addressed the appraisal issue, and Mr. Geer states, in
3 the second highlighted paragraph, "I discussed this with my
4 client, and was advised that one of the reasons that we
5 proceeded with the appraisal in the building was due to the
6 fact that the appraisal was suggested by the representative
7 of the Pennsylvania Insurance Commissioner's office who
8 called in follow up to your client's Complaint." Is that
9 right?

10 A. That's what it says.

11 Q. Did you at any time tell the Bordens that the
12 decision to invoke the appraisal clause had been made on
13 April 15, 2003, two days before the Bordens even sent their
14 complaint to the insurance commission?

15 A. I believe Paul's letter is not accurate is what
16 you're saying. It's not. The insurance commission office
17 contacted me afterwards and merely said to me that they
18 intended to advise Dr. Borden to invoke the appraisal clause.
19 And I told the insurance commissioner's office that we had
20 already done that.

21 Q. So the letter is inaccurate to the extent it
22 suggests that it was the insurance commissioner's idea to
23 send this case to appraisal because that had occurred after
24 you decided to invoke the process?

25 A. I believe it's inaccurate, yes.

1 THE COURT: Mr. Murphey, contrary to my original
2 estimate, I'm not going to break at 12:30 today. It's
3 necessary for me to break at my regular time, which is now.
4 How much longer do you figure you have with Mr. Bennett on
5 cross? Just roughly.

6 MR. MURPHEY: Half an hour.

7 THE COURT: All right. We'll start again at 1:15.

8 (Pause in the proceedings.)

9 THE COURT: Mr. Murphey, please resume.

10 Q. Mr. Bennett, when we left off, we were talking about
11 some letters which had been exchanged between counsel for
12 Amica, for you, and counsel for the Bordens. I'm going to
13 show you two of those letters, which are from the lawyer for
14 Amica -- I'm sorry, the lawyer for the Bordens, Attorney
15 Terry Jones, and sent to Mr. Geer. Do you recognize this
16 letter, which is marked as Exhibit 3-35?

17 (Plaintiff's Exhibit No. 3-35 marked for
18 identification.)

19 A. Yes.

20 Q. Do you recognize this letter, which is marked as
21 Exhibit 3-36?

22 (Plaintiff's Exhibit 3-36 marked for
23 identification.)

24 A. Yes.

25 Q. So you would have reviewed those letters when they

1 came in?

2 A. Yes.

3 Q. Did either of those letters cause Amica to change
4 its position in any way in this case?

5 A. In all honesty, I don't recall what the content of
6 the letters were.

7 Q. Okay. Do you want to look at them.

8 A. Okay.

9 Q. Mr. Jones was discussing the extent of Amica's
10 liability with respect to the loss, and the letters speak for
11 themselves, so I don't want to go through them in any detail.
12 I just want to find out -- well, actually, I wanted to
13 confirm for myself that neither of these letters caused Amica
14 to change its position in any way in this case.

15 MR. GEER: Objection. Could you clarify what you --
16 regarding what?

17 MR. MURPHEY: Regarding the reliance on the Schumann
18 estimate. I'm sorry. Thank you.

19 Q. Regarding relying on the Schumann estimate.

20 A. Is there more to the letter? I'm sorry, go back to
21 that second page.

22 THE COURT: Do you understand the question,
23 Mr. Bennett?

24 THE WITNESS: Yes. I believe so. What's the third
25 page? Realize I'm skimming the letter here.

1 Q. I understand, but you said you're familiar with it.

2 A. I'm familiar in the sense that I had it in my file.

3 Okay. What's the other letter?

4 Q. The first question, then, would be, since we're
5 going piecemeal, is whether this June 5th letter from
6 Attorney Jones, the various things he said about Amica's
7 obligations, whether that changed Amica's position at all
8 with respect to its reliance on the Schumann estimate?

9 A. I can't comment on the specific letter and what my
10 thoughts were at that specific time, but about that time we
11 had another contractor -- we engaged a second contractor.

12 Q. Let's take a look at -- well, why was it that you
13 engaged a second contractor?

14 A. I believe your partner pointed out the issues with
15 Visions that I was not aware of.

16 Q. What issues?

17 A. That he wasn't -- that they weren't qualified.

18 Q. How was that brought to your attention?

19 A. A letter from your partner.

20 Q. I'm going to show you a letter that's marked Exhibit
21 3-36. I'll show you the second page of it. It's dated June
22 16, 2003. This is a letter from my partner. And I've
23 highlighted a section, it says, "Also, at your next
24 convenience, I'd like to know more about the process which
25 Amica utilized to select Visions to do the temporary repairs.

1 In other words, what did Amica do to assure itself that
2 Visions was a capable, qualified, and well-regarded building
3 contractor experienced in the construction of 'high-end'
4 residential dwellings?" Did I read that correctly?

5 A. Yes.

6 Q. Is this what you are referring to?

7 A. No, I don't believe so. I believe there was another
8 letter where he more specifically questioned their
9 experience.

10 Q. Let me ask you this, before we get to that:
11 Mr. Jones posed some questions in this about what Amica had
12 done to assure itself that Visions was a capable, qualified,
13 and well-regarded building contractor capable of adjusting a
14 high-end residential home. Did you ever respond to that in
15 any way?

16 A. I don't recall what -- how Mr. Geer responded to
17 that.

18 Q. Did you ever respond?

19 A. I had an attorney representing me at that point.

20 Q. So you weren't doing anything with respect to
21 responding to letters from counsel?

22 A. This letter, I believe, was addressed to Mr. Geer.

23 Q. I think it was, yes. My question to you was whether
24 you did anything.

25 A. I did not respond to that letter. I don't believe

1 so.

2 Q. Do you know if Mr. Geer did?

3 A. I can't recall, honestly.

4 Q. Do you know whether anybody from Amica provided
5 Mr. Geer any information to respond to this letter and to
6 explain to the Bordens, through their attorney, what Amica
7 had done in investigating the qualifications of Visions?

8 A. I can't recall. I know that Mr. Geer has a copy of
9 our file. I can't recall when my memo was that you had
10 referenced earlier that referred to my call to Visions, that
11 was the extent of it, as I pointed out.

12 Q. And that's the only thing you did?

13 A. I pointed that out previously.

14 Q. You have. Do you know if anybody else from Amica,
15 or Mr. Geer on Amica's behalf, either doing further
16 investigation or responding to Mr. Jones' request --

17 A. I know Mr. Geer looked into some things.

18 Q. Do you know whether he shared any of that with the
19 Bordens or Attorney Jones on behalf of the Bordens?

20 A. I honestly can't recall.

21 Q. So you said that you thought that there was another
22 letter whereby somebody more specifically challenged Visions
23 as opposed to simply asking questions about them?

24 A. My understanding was that Terry Jones was conveying
25 to Mr. Geer, and I thought it was through a letter, about the

1 qualifications of Visions, and --

2 Q. Do you have that letter or --

3 A. I'm not sure. I'm not sure. I'm just telling you
4 what my memory is, and that was my memory, and that's what
5 prompted us to hire a second contractor.

6 Q. Because I haven't seen that, but I don't -- you
7 can't point it out to me?

8 A. I don't have the file in front of me, I'm sorry.

9 Q. There was a letter that actually specifically
10 challenged Visions' competence?

11 A. It's just my memory.

12 Q. So did Amica at any point in time decide for
13 itself -- well, I'll strike that. Did you at any time decide
14 for yourself that Visions was competent and qualified to
15 render the type of estimate that Mr. Schumann had?

16 A. I think the qualifications are lacking, yes.

17 Q. And when did you reach that conclusion?

18 A. About the time of that -- I think it was in June.

19 Q. What was it that brought to your attention that
20 their qualifications were lacking?

21 A. I believe I just said that.

22 THE COURT: Sir, you're not getting it done for me.
23 You've got to keep your voice up. You're whispering. I know
24 it's easy to forget. And you're starting to talk over each
25 other. Start that again.

1 Q. You just said that you reached a conclusion at some
2 point in time that Visions' qualifications were lacking, was
3 the word you used --

4 A. My understanding was --

5 Q. No. That was my question -- that's what you said,
6 right?

7 A. Say that again, I'm sorry.

8 Q. Sure. I just want to make sure I got your answer
9 right. I believe what you just said, in response to a
10 previous question, was that at some point in time you did
11 reach the conclusion that Visions' qualifications were
12 lacking.

13 A. Correct.

14 Q. What caused you to reach that conclusion?

15 A. The information that was supplied to me by Terry
16 Jones -- that I had heard that came from Terry Jones
17 questioning their qualifications.

18 Q. There's two different aspects to that. Somebody can
19 question somebody's qualifications and say, hey, are they
20 qualified, or somebody can bring you information and say, for
21 these reasons this person is not qualified. Now, we just
22 read a letter from Mr. Jones, and you'll agree with me that
23 that letter was asking you about their qualifications not
24 telling you anything; is that right? The letter we just
25 read.

1 A. I didn't read the whole letter. I skimmed it, I'm
2 sorry. But my understanding was --

3 Q. Hang on one second. Wait till I ask a question.

4 THE COURT: You're putting up the June 5th letter?

5 MR. MURPHEY: I am.

6 Q. Putting back up the June 5th letter, Mr. Bennett,
7 and it says, "Also, at your next convenience, I'd like to
8 know more about the process which Amica utilized to select
9 Visions to do the temporary repairs. In other words, what
10 did Amica do to ensure itself that Visions was a capable,
11 qualified, and well-regarded building contractor experienced
12 in the construction of 'high-end' residential dwellings?"
13 You'll agree with me that that is a question or those are a
14 series of questions?

15 A. Yes.

16 Q. It does not provide you any information regarding
17 Visions' qualifications, correct?

18 A. Correct.

19 Q. Now, you also just said that you reached a
20 conclusion at some point that Visions was not -- that their
21 qualifications were lacking, to use your words, correct?

22 A. Correct.

23 Q. What information did you have to cause you to reach
24 that conclusion?

25 A. All I can tell you is my memory, it came from

1 Mr. Jones.

2 Q. And you're not sure what format or form it came in?

3 A. I thought it was a letter, I could be wrong, but it
4 could have been a conversation that he had with Mr. Geer, I'm
5 not sure.

6 Q. What was the information specifically?

7 A. Some of the stuff that you had alleged earlier.
8 That he doesn't have restoration written on the side of his
9 building, or something to that effect, and that he
10 specializes in dry wall or something like that. And it was
11 calling into question the qualifications, and so, as a result
12 of that, as I said, we then hired a second contractor to go
13 out there and look at the loss.

14 THE COURT: Excuse me a second. I just want to make
15 sure I didn't misunderstand you or mishear you. Did you say
16 some of the "stuff" that Mr. Jones had told you earlier?

17 THE WITNESS: No. I'm sorry, I didn't mean Jones.
18 I mean Mr. Murphey. That he was talking about earlier.

19 THE COURT: Oh, here. Not Mr. Jones had told you.

20 THE WITNESS: I'm sorry.

21 THE COURT: Go ahead.

22 Q. At some point in time, though, you did reach an
23 independent conclusion that Visions' qualifications were
24 lacking and you needed to get a contractor --

25 A. Correct.

1 Q. -- you needed to get a contractor who would be more
2 appropriate and more qualified to express an opinion on the
3 loss in this case?

4 A. Yes. Up to this point in time I had a general
5 adjuster telling me one thing, I had a contractor telling me
6 he agreed with our general adjuster's opinion, and the only
7 other thing I had was the PA adjuster. I didn't have
8 anything other than that. So like I said before, it was two
9 to one.

10 Q. Two to one, and one of those is Brian Seifert?

11 A. That's correct.

12 Q. Brian Seifert never did an estimate, though,
13 correct?

14 A. That's correct.

15 Q. The only information you had from Brian Seifert was
16 a one-page letter from him; is that correct?

17 A. He wrote me a letter saying that he could do the
18 work based upon Schumann's estimate

19 Q. I have marked, as Exhibit 9, the letter I think
20 you're referring to.

21 (Plaintiff's Exhibit No. 9 marked for
22 identification.)

23 A. That's correct.

24 Q. Is this it?

25 A. Yes.

1 Q. Again, I have marked that as Exhibit 9, it's a
2 letter from Mr. Seifert dated March 7, 2003; is that correct?
3 And you never got any other information from Mr. Seifert?
4 You didn't get an estimate, or any other letter, and you
5 never talked to Mr. Seifert yourself, correct?

6 A. No. I did.

7 Q. Before April 15th, though?

8 A. I couldn't be sure about that.

9 Q. Because you did testify before that you talked to
10 him on April 15th.

11 A. Yes.

12 Q. But before that time you don't know whether you
13 spoke with him or not?

14 A. I don't recall.

15 Q. But anyway, this was the only letter that you got,
16 and the first paragraph of the letter says, "We at Visions
17 Corp. feel the project can be done at your estimated cost.
18 As all fire claims, there are always hidden costs on areas
19 that couldn't be seen or areas that had no access." Is that
20 right?

21 A. Correct.

22 Q. Did you ever talk to Mr. Seifert about what he meant
23 by that? Like what hidden costs there might be? How
24 extensive they might be?

25 A. I can tell you --

1 Q. I'm sorry, sir, the only question I asked is whether
2 you ever talked to Mr. Seifert about his reference to hidden
3 costs?

4 A. No.

5 Q. You demanded appraisal in this case because you
6 believed that the gap between the Parise estimate on behalf
7 of the Bordens and the Schumann estimate on behalf of Amica
8 was too large to be bridged by anything other than an
9 appraisal procedure, correct?

10 A. That's true.

11 Q. And then you later changed course and decided not to
12 go through with the appraisal, and instead, got another
13 contractor to look at the loss; is that correct?

14 A. My memory is, in all honesty, your partner asked me
15 to slow the appraisal process down, I think that's in the
16 letter. But basically we continued to listen to -- you know,
17 listen and -- what was happening and we reacted to that, and
18 when the --

19 Q. The gap didn't get any closer after counsel got
20 involved for the Bordens? There was still the same gap,
21 right?

22 A. No. There was no change there, but what I'm talking
23 about is that you then began to question the qualifications
24 of Seifert. But when we demanded appraisal, I had a general
25 adjuster telling me that the repairs could be done for this

1 price, and I had a contractor, I believed to be a valid
2 contractor, that was telling me that they could do the work
3 based on the general adjuster's estimate.

4 Q. Before we get off that subject, and I don't mean to
5 belabor the subject, but you just said that there was a
6 contractor that you believed to be competent or whatever.
7 Ultimately you decided independently that Visions was not
8 competent to render the estimate, and, therefore, you needed
9 to get somebody else, right?

10 A. Yes.

11 Q. Because otherwise you would have written back and
12 said, I'm sorry, Visions said they could do the work at this
13 amount, they're a competent contractor, and we're going to
14 have to go to appraisal, right?

15 A. What I'm saying is, based on that information, we
16 then decided to have a second contractor.

17 Q. How did you choose Dan Jones?

18 A. I discussed that with Mr. Geer.

19 Q. And he did an estimate in this case which, in your
20 mind, corresponded more with Mr. Parise's than it did with
21 Mr. Schumann's; is that right?

22 A. Pretty close in the middle.

23 Q. So it didn't correspond more with Mr. Parise's than
24 it did with Mr. Schumann's?

25 A. Well, it included the -- dollar-wise it was in the

1 middle.

2 Q. I believe you had testified that you felt that it
3 corresponded more with Mr. Parise's than it did with
4 Mr. Schumann's?

5 A. Well, the big issue was the gutting of the interior,
6 and Mr. Jones agreed to that.

7 Q. So in that sense, that's what you meant when you
8 said that Mr. Jones' -- when I say you said, you said in your
9 deposition, that Mr. Jones' estimate corresponded more with
10 Mr. Parise's, you meant in the scope of the work?

11 A. Yes.

12 Q. Their prices were different? Because Mr. Jones'
13 estimate was lower than Mr. Parise's.

14 A. Yes.

15 Q. And you made a payment based on the Jones estimate,
16 and then later were able to get the claim resolved with the
17 Bordens for slightly more than that; is that correct?

18 A. Well, with most estimates, there was a supplement,
19 and there was a supplement with the GS Jones estimate. And
20 then that supplement concluded the claim.

21 Q. I'm showing you a 19-page document I have marked as
22 Exhibit 4. Do you recognize this document?

23 (Plaintiff's Exhibit No. 4 marked for
24 identification.)

25 A. Yes.

1 Q. What is that?

2 A. It's some of our intranet handling guidelines.

3 Q. So those are claim handling guidelines that Amica
4 has?

5 A. Yes.

6 Q. And these are dated August of 1999?

7 A. That is, yes.

8 Q. You will agree with me that these guidelines apply
9 to a claim of the type of the Bordens in this case, correct?

10 A. Those are our goals.

11 Q. But these goals, whatever you call them, they apply
12 to this type of claim --

13 A. Sure.

14 Q. -- correct? Because this is a -- these are
15 entitled, "First Party Property Loss Handling Expectations,"
16 and this was a first party property loss, correct?

17 A. Correct.

18 Q. Now, I have a couple of questions about the
19 guidelines. First, on Page 1, you will agree with me, will
20 you not, that the second paragraph on Page 1 indicates that,
21 "It is to expected that our insureds may have an emotional
22 reaction to a devastating fire." Is that correct?

23 A. That's correct.

24 Q. And this paragraph also suggests, "You may not be
25 able to get the focussed attention of your insureds for some

1 period of time after the fire." Is that correct?

2 A. That's correct.

3 THE COURT: Let me just jump in here one second.
4 Not by way of slowing you down, but by way of making sure
5 what the real issue is -- in fairness, let me ask you,
6 Mr. Geer, just because it's a legal question I don't want to
7 ask the witness. It is no part of Amica's defense in this
8 case, is it, that any delay in paying or in reaching an
9 amicable resolution as to the dwelling portion of the loss
10 was related to or involved lack of cooperation from the
11 insureds or insureds that were so bereaved that they weren't
12 meaningfully able to help?

13 MR. GEER: I believe that's correct, Your Honor.

14 THE COURT: Then I'm not sure why this is relevant.

15 MR. MURPHEY: That's fine. Just by way of
16 response --

17 THE COURT: I can almost take judicial notice of the
18 fact that if somebody's house burns down, it's likely they're
19 going to be somewhat bereaved.

20 MR. MURPHEY: There are references in the claim file
21 materials, which are part of the evidence in this case, with
22 respect to the cooperation, or lack thereof, of the insureds.

23 THE COURT: That's now been taken off the table as a
24 defense.

25 MR. MURPHEY: Thank you, Your Honor.

1 Q. I'm now referring to Page 3 of the guidelines. The
2 first paragraph says, "The adjuster assigned to the file
3 should meet with the insureds within two hours." Is that
4 correct?

5 A. That's what it says.

6 Q. That, of course, didn't happen in this case; is that
7 right?

8 A. Those guidelines are written with many geographical
9 areas, and frankly, the location of our home office is Rhode
10 Island. You don't get any smaller than Rhode Island. And in
11 all honestly, on that particular day, as I was trying to
12 point out before, there was a major snowstorm. On a Monday,
13 the town that we work in was declared a disaster area. So I
14 don't think it was physically possible to get an adjuster out
15 there in that particular situation.

16 Q. To be fair to you, Canonsburg is more than two hours
17 from Erie on the best day? Unless you're Mr. Geer who drives
18 fast.

19 A. On Monday, when I tried to contact the cause and
20 origin guy, their office was closed because of the storm.

21 Q. I understand. But this is the guideline that Amica
22 has created with respect to first party --

23 A. I believe it's the goal.

24 Q. Let me ask you just very, very briefly about the
25 snowstorm. I think you were trying to say before, and I

1 apologize if I was rude with cutting you off, with regard to
2 some challenges Mr. Schumann may have had due to the weather.
3 I think you were going to suggest that it made it difficult
4 for him to inspect the loss.

5 A. I think it's clear that it was a very difficult
6 environment at that time. But in all honestly, that's what
7 he gets paid to do.

8 Q. It's not Amica's position, is it, that
9 Mr. Schumann's estimate was too low because there was damage
10 he was unable to see because of the bad weather, is it?

11 A. You'd have to ask Mr. Schumann about that issue.
12 But from my understanding of the situation, it was really
13 that -- the big issue was whether the house had to be gutted
14 or not. That was the -- that's the whole controversy here.

15 Q. That could be observed whether there was a snow
16 storm or not?

17 A. I believe so.

18 Q. In fact, Amica representatives, you and Mr. Schumann
19 were in the house April 15th -- I know the weather is bad in
20 Erie, but I presume that there wasn't a state of emergency on
21 April 15th?

22 A. I don't believe there was.

23 Q. Even after that Mr. Schumann still felt that his
24 estimate was accurate, correct?

25 A. He did.

1 Q. So the weather didn't really have anything to do
2 with anything, other than, perhaps, response time?

3 A. I'm sure it was cold for him, though.

4 Q. I understand. The next page, and again, this is
5 covering a bunch of different aspects of a first party claim,
6 the highlighted sentence says, "Coordinate pack-out between
7 insured and reputable cleaner." My only question is, you
8 didn't know the reputations of any of the cleaners in Erie;
9 is that correct?

10 A. That's correct.

11 Q. Because of where you're located, correct?

12 A. Correct.

13 Q. And neither did Mr. Schumann because he was not an
14 Erie adjuster either; correct?

15 A. What I'm saying is I believe that's the goal. I
16 mean, we certainly don't want to contract with a disreputable
17 cleaner.

18 Q. I understand. There's a section with respect to
19 dealing with repair contractors. This is Page 7 of the
20 guidelines. Do you see that?

21 A. Yes.

22 Q. Now, at the bottom of the letter, the highlighted
23 portion says, "Our contractor becomes a construction
24 consultant, and should be paid for time working the numbers."
25 And I guess I don't understand, in this case, who is your

1 contractor? Would that have been Mr. Seifert? Because
2 Mr. Schumann's not a contractor, right?

3 A. I believe it would reference Mr. Seifert.

4 Q. So this contemplates a situation where you would
5 have a contractor who was assisting Amica in developing the
6 estimate, correct?

7 A. That's correct.

8 Q. Now, the next sentence says, "If an impasse
9 develops, explain appraisal to the insured and document by
10 letter offering the insured the choice to initiate." And
11 then the next highlighted sentence says, "We will file for
12 appraisal if there's no resolution and the insured declines
13 to request appraisal." In this case, though, the Bordens
14 were never asked to initiate appraisal, were they?

15 A. No, they weren't.

16 THE COURT: Just out of curiosity, if you know,
17 Mr. Bennett, why would it be a goal to give the insured the
18 first crack at initiating appraisal if under the policy
19 either side can initiate appraisal and you end up in the same
20 spot anyway? What is the advantage to that?

21 THE WITNESS: I'm sure that the intent of these --
22 all these guidelines is to give options to the insured, and
23 to listen to their input and respond like that.

24 Q. But you have never been involved in an appraisal in
25 your career, correct?

1 A. No, sir.

2 Q. Next, Page 12 of the guidelines, Section I relating
3 to payments, the highlighted paragraph says, "As outlined in
4 PLD basics memo," which is, I take it, another thing on your
5 intranet that helps you know what the company's position is
6 on things, "pay what we know we owe. If estimator and
7 insured contractor have not reached AP" -- does that mean
8 agreed price?

9 A. Yes.

10 Q. "Pay our estimator's ACV figure with letter clearly
11 indicating we remain open for discussion, further review to
12 reach agreement," correct?

13 A. That's what it says.

14 Q. So, at least pursuant to those guidelines, the
15 letter that made the ACV payment should have "clearly
16 indicated" that we remain open for further discussion,
17 correct?

18 A. I believe that was my intent when I asked for the
19 contractor information. Because in all honesty, why would I
20 ask for a contractor if I wasn't going to continue the
21 dialogue? If I was forcing the payment, I wouldn't have
22 asked for the contractor's name. I would have sent the
23 check.

24 Q. Well, the Bordens could have understood that as the
25 contractor is supposed to begin repairs. That's all.

1 Section M deals with independent adjusters, and
2 Mr. Schumann would have been an independent adjuster in this
3 case, correct?

4 A. Correct.

5 Q. And this says -- the highlighted section says, "We
6 urge you not to rely on independents for bottom-line
7 estimating. Repair contractors make our best consultants on
8 actual dollar exposures. Repairers are more believable to
9 our insureds. Even if your independent has estimating
10 skills, we need to offer our insureds a repair contractor who
11 can put it all together." Did I read that correctly?

12 A. Yes.

13 Q. And that's not what happened in this case, correct?

14 A. We did have a repair contractor.

15 Q. Mr. Seifert?

16 A. That's correct. And as I said before, we didn't
17 have the name of a contractor to refer to them.

18 Q. And you didn't give them any names, correct?

19 A. I didn't have any to give them.

20 MR. MURPHEY: Judge, that's all the questions I
21 have. I would move into evidence Exhibits 3, which is the
22 claim file exhibit binder; Exhibit 4, which is the First
23 Party Property Loss Handling Expectations; Exhibit 5, which
24 was the insurance policy; Exhibit 8, which is Mr. Bennett's
25 memo of April 30, 2003; and Exhibit 9 would be Mr. Seifert's

1 letter of March 7, 2003.

2 THE COURT: There were, of course, other exhibits
3 identified, but those are the only ones you want moved?

4 MR. MURPHEY: That's correct.

5 THE COURT: Those are admitted.

6 MR. MURPHEY: Thank you very much, Mr. Bennett.

7 THE COURT: Mr. Geer, are you going to take up this
8 witness now or reserve for your case?

9 MR. GEER: Your Honor, I'm going to stay within the
10 scope of direct. I'm also going to call him in my case,
11 assuming that meets with the Court's approval.

12 THE COURT: That's fine.

13

14 DIRECT EXAMINATION

15 BY MR. GEER:

16

17 Q. Mr. Bennett, I'm going to jump around on you a
18 little bit, and I'm going to ask you some questions to
19 clarify some of the things that Mr. Murphey covered in your
20 earlier testimony. One of the things he asked you was about
21 your research or the information you obtained regarding
22 Visions and Mr. Seifert. Do you recall that?

23 A. Yes.

24 Q. I believe I recall you saying you could not recall
25 the date or the time period during which you checked out

1 Mr. Seifert.

2 A. That's correct.

3 Q. I'm going to show you what Mr. Murphey marked as
4 Exhibit 3-17. This is a memo to your file. Can you read
5 that?

6 A. Yeah. The memo is dated March 21, 2003.

7 Q. I circled a section under the heading, "Coverage A".
8 I would request that you read to the Court what you recorded
9 on March 21, 2003.

10 A. It says, "I spoke with the owner of Visions
11 Corporation. I was told that he" --

12 THE COURT: It's too fast. Let me do it. It says,
13 "I spoke with the owner of Visions" -- do we really need this
14 whole thing read in? I'm happy to do it.

15 MR. GEER: We don't, Your Honor.

16 THE COURT: In other words, Exhibit 3, and all of
17 its -- for instance 3-17 is part of Exhibit 3. It's part of
18 the record. I don't want to slow you down --

19 MR. GEER: That's fine. I wasn't sure.

20 THE COURT: Yes, it's in. There was one he referred
21 to and didn't put in that I wanted to put in.

22 Q. Some of the other concerns that were alleged at one
23 point or another by the Bordens or the representatives, first
24 of all, carcinogens, do you remember that question?

25 A. Yes.

1 Q. What did you do when you were confronted with
2 questions regarding carcinogens?

3 A. I checked with the dry cleaning network about that
4 issue.

5 Q. And did you get any -- did you get any more
6 information back from them which would clarify those issues?

7 A. They gave me some information about it. I can't
8 remember specifically what the memo said. I think they
9 talked about the dry cleaning methods that they use, and the
10 chemicals that are used in dry cleaning and the fact that you
11 purchase new clothes, the new clothes has -- portions of the
12 clothing that have been previously dry cleaned. So, in
13 reality, you're getting dry cleaned -- when you buy new
14 clothes, it comes partially dry cleaned already.

15 Q. In addition, I believe that the information that
16 Mr. Murphey read to you said something about Dr. Borden is
17 researching something regarding carcinogens.

18 A. Right.

19 Q. Do you recall that?

20 A. I never --

21 Q. Did you ever receive any more information from
22 Dr. Borden or his representatives which would have told you
23 that this cleaning process you were thinking about using on
24 the clothing was dangerous or it shouldn't be used?

25 A. No. I never received anything.

1 Q. Also, while we're on the subject of the cleaning,
2 you talked about the fact that -- or Mr. Murphey asked you
3 questions about the fact that there was a time when you were
4 advised that the Bordens had rejected all of the clothing, do
5 you recall that, that had been cleaned and then you wrote
6 them the letter --

7 A. Right.

8 Q. -- that Mr. Murphey talked about?

9 A. Right. They actually rejected all the contents.

10 Q. Right. I think you explained that you objected to
11 that. What did Amica ultimately do regarding those contents?

12 A. Well, we paid to have the dry cleaning cleaned, and
13 then, in the end, we paid for all the clothing.

14 Q. So you paid for cleaning first after you were --
15 were you satisfied that the cleaning wasn't done
16 satisfactorily?

17 A. What I believe I said was some items -- in my
18 opinion, some items cleaned, some items didn't, but in the
19 end, I believe we paid for all the dry cleaning. So we paid
20 for the cost of dry cleaning, and then we paid for the
21 replacement cost of those items.

22 We did the same thing with the contents. All the
23 furniture contents, that sort of thing, were cleaned -- not
24 everything, but a lot of it was cleaned, they wouldn't accept
25 any of that, so then we ended up paying for that. And then,

1 after the settlement took place, after they had rejected all
2 of these items, they actually asked if they could take some
3 of these items and we gave them to them.

4 Q. So you didn't force any items back on the Bordens,
5 correct?

6 A. We totalled everything.

7 Q. And you didn't charge them for the dry cleaning, did
8 you?

9 A. That's correct.

10 THE COURT: Mr. Geer, I don't fault you for pursuing
11 this because I think Mr. Murphey raised it, but I'm beginning
12 to see this case more clearly now, and we are now into areas
13 that I think have nothing to do with the essence of the bad
14 faith claim here. And the witness, a moment ago, said the
15 hub or the heart of the matter is whether or not, and I'm
16 paraphrasing you but I think it's accurate, whether or not in
17 order to get the house into prefire condition, it was
18 necessary to knock out the walls or whether it could be -- or
19 to attack the soot and smoke, or whether it could be done
20 through some less drastic measure. That, in my view, is the
21 heart of the case as well. So let's focus on that.

22 MR. GEER: I will, Your Honor.

23 THE COURT: Once again, you know --

24 MR. GEER: It's one of the items, I certainly agree
25 that's the heart of the case.

1 THE COURT: No indictment levelled at you. I'm just
2 trying to make sure we get out of here by Christmas.

3 MR. GEER: I understand.

4 Q. There were also questions asked by Mr. Murphey
5 regarding the payments that you submitted to the Bordens. Do
6 you recall those?

7 A. Yes.

8 Q. I'm going to show you a couple of documents. First
9 was a letter which you submitted with the check that you
10 already discussed. The date of that letter was?

11 A. March 11, 2003.

12 Q. Now, at some point in time you received notice that
13 the Bordens were not going to accept that check; is that
14 correct?

15 A. That's correct.

16 Q. You also said the Bordens were issued a check for
17 contents, did you not?

18 A. Yes. I believe it was about \$39,000.

19 Q. I'm going to show you -- so you can tell the Court a
20 date, I'm going to show you a copy of your cover letter.
21 First of all, do you see the language in there, second
22 paragraph, "As was explained in our letter"?

23 A. Yes.

24 Q. They had returned the contents check?

25 A. I think it says, "Acceptance of these checks does

1 not affect your ability to contest the estimate -- estimate
2 of damages or make claim for additional damages."

3 Q. You received a note with the checks from the
4 Bordens, did you not?

5 A. Yes.

6 Q. Do you recall what the note said?

7 A. I believe there was one note that said, "Under
8 advice from Mr. Parise, we are not to accept this check."

9 Q. Would this be the note you just referred to?

10 A. Yes.

11 Q. It is dated?

12 A. March 17, 2003.

13 Q. Signed Amy and Jonathan Borden?

14 THE COURT: Is that identified for the record?

15 MR. GEER: Yes. I'm going to identify that for the
16 record as Defendant's Exhibit A-1.

17 (Defendant's Exhibit A-1 marked for identification.)

18 THE COURT: A-1?

19 MR. GEER: A-1. For the record, Your Honor, in my
20 opening statements I referred to some photographs, and I've
21 labeled all the Photographs as P.

22 THE COURT: Like proof? Exhibit P?

23 MR. GEER: P, the documented photographs.

24 THE COURT: All right.

25 Q. Looking at the stamp at the top, when, Mr. Bennett,

1 did you receive the letter from the Bordens indicating that
2 they were returning the check?

3 A. March 25, 2003.

4 Q. Thereafter you received a second letter from the
5 Bordens that was similar to the first. I'm going to mark
6 that as A-2. That indicates what?

7 (Defendant's Exhibit A-2 marked for identification.)

8 A. They returned the \$39,945.48 check. It says, "We
9 previously returned the check in the amount of \$295,000.
10 We're not accepting these as settlements of the claim" --

11 THE COURT: Too fast.

12 THE WITNESS: Sorry.

13 THE COURT: Mr. Bennett, this lady has to get
14 down what you're saying.

15 THE WITNESS: I understand.

16 THE COURT: It's easy to slip into it, I'm not being
17 critical. Just slow down a little bit. Go ahead.

18 A. "Enclosed is the check in the amount of \$39,945.48.
19 We previously returned the check in the amount of
20 \$295,098.92. We're not accepting these as settlements of the
21 claim. Sincerely, Jonathan and Amy Borden."

22 Q. Date received, according to your stamp?

23 A. March 26, 2003.

24 Q. Did you recognize at this point that there was some
25 confusion or misunderstanding about the intent of sending the

1 checks?

2 A. Yes.

3 Q. How did you respond?

4 A. With that letter, I believe.

5 Q. We're going to mark this as A-3. This letter was
6 sent what date?

7 (Defendant's Exhibit A-3 marked for identification.)

8 A. It's dated March 26, 2003.

9 Q. The exact same day that you had received the second
10 check back from Mrs. Borden?

11 A. That's correct.

12 Q. And that letter said, "Neither check represents a
13 settlement check. They are payments we feel we owe based
14 upon our adjuster's estimates of the damages," correct?

15 A. That's correct.

16 Q. Now, Mr. Murphey asked you a number of questions
17 about whether sometime later they finally accepted these
18 checks, and you weren't real clear on the number -- he
19 wouldn't let you give a date or you weren't real clear, I'm
20 not sure which it is. It was sometime later, wasn't it?

21 A. Yes.

22 Q. Right after you sent this letter to the Bordens,
23 were you contacted within a week or two or three weeks or
24 four weeks and had someone say, okay, we'll take the checks
25 back now --

1 A. No.

2 Q. -- we're going to accept them?

3 A. No. As a matter of fact, when we went to the
4 meeting on April 15th, I discussed this issue with Mr.
5 Parise. And his answer to me was he had recommended that the
6 Bordens take the checks, and they were the ones refusing to
7 take them.

8 Q. In fact, it was not until they retained counsel,
9 Terry Jones, that Amica was able to convince them to accept
10 the checks; is that right?

11 A. That's correct.

12 Q. Do you recall that on one of these letters that
13 Mr. Murphey put up on the board that there was actually
14 specific language in the letter which suggested that we would
15 be willing to resubmit those checks and request that they
16 accept them?

17 A. I'm sorry, what was the question?

18 Q. Let me just show you the exhibit. Let me just go to
19 this. Did you receive back the checks after they had
20 actually been endorsed or deposited -- or did Amica receive
21 back the checks after they were endorsed or deposited?

22 A. Yes.

23 Q. I'm going to show you a copy -- first I'm going to
24 ask you if this document, which is going to be marked as A-4,
25 was, in fact, a copy of the check sent to the Bordens. Can

1 you see that?

2 (Defendant's Exhibit A-4 marked for identification.)

3 A. Yes.

4 Q. That's one check. We have a second check. First of
5 all, was there any -- this is the check for \$295,098.92. Is
6 there any notation on that check about full and final
7 settlement or anything like that?

8 A. No. I believe that was an allegation that they had
9 presented.

10 Q. Let me see if I can magnify this. Can you tell,
11 right here, the date that that was deposited by Amy Borden?
12 Is that June 20th?

13 A. It looks like June 20, 2003.

14 Q. So you wrote to them on March 26th telling them they
15 could accept this without prejudice; Mr. Parise told you on
16 April 14th that the Bordens, despite his advice, were not
17 willing to accept it; and ultimately they did accept it on
18 June 20th, correct?

19 A. Correct.

20 Q. So we have our chronology as to when they finally
21 received these moneys?

22 A. Correct.

23 Q. Accepted these moneys? Mr. Murphey also asked you
24 questions regarding the report that Mr. Parise sent to you in
25 a letter form that said that he had taken Mr. Seifert through

1 the building, and, apparently, Mr. Seifert had made some
2 comment which he construed to mean that he was no longer
3 comfortable with Mr. Schumann's estimate. Do you recall
4 that?

5 A. Yes.

6 Q. What did you do upon receipt of that information?
7 Did you talk with Mr. Seifert about that allegation?

8 A. We talked, and he conveyed to me a different story.
9 He, once again, told me that he could do the -- do the
10 repairs based on Schumann's estimate.

11 Q. Now, there had always been one qualification in
12 Mr. Seifert's offer, was there not?

13 A. I'm sorry?

14 Q. There was always a qualification in what Mr. Seifert
15 was saying, was there not?

16 A. Yes.

17 Q. What was that qualification?

18 A. That, as with all losses, additional damages can be
19 found.

20 Q. Can you explain what you mean by that to the Court.

21 A. Well, I have never -- especially when you're dealing
22 with a losses of this size, I have never seen a contractor's
23 estimate being perfect. It's just an estimate of damages.
24 I's not a bill for damages; it's an estimate. Even on auto
25 claims, I'd say at least 50 percent of the -- of auto claims

1 result in supplements. As I said, I've -- I don't send out a
2 letter telling people that this is a full release of all
3 claims or anything like that. We send a check and the
4 process continues. If there's further negotiations -- I
5 mean, I've seen 6, \$700 auto estimates come in with a
6 supplement. And we consider them and pay them, if
7 appropriate.

8 Q. In fact, showing you the March 7th letter which
9 Mr. Murphey already put into evidence, the letter from
10 Mr. Seifert. It specifically says, "As with all fire claims,
11 there are always hidden costs on areas that couldn't be seen
12 or areas that had no access," correct?

13 A. Correct.

14 Q. How does Amica normally handle that situation in a
15 fire claim where your adjuster can't access the area or can't
16 see the area and it turns out later that there's more damage?

17 A. The process continues. I mean, we'd have further
18 dialogue, inspection of the damages, and continue the -- to
19 review -- review the claim.

20 Q. Mr. Murphey asked you some questions regarding Jack
21 Owens. He was the appraiser that you hired, correct?

22 A. Correct.

23 Q. And he questioned you regarding the letter you sent
24 to Mr. Owens also suggesting that he might be assigned the
25 contents version.

1 A. That's correct.

2 Q. First of all, do you remember the time period that
3 this occurred?

4 A. It was after the April 15th meeting.

5 Q. So it was around April or May, correct? At that
6 point had you even received the Bordens' contents inventory?

7 A. No.

8 Q. So you did not have anything for him to work off of,
9 correct?

10 A. No.

11 Q. You retained him as an appraiser, and the appraisal
12 never moved forward, correct?

13 A. Correct. It was -- the request was by the firm to
14 review other options. So it basically stopped and never
15 proceeded.

16 Q. Was your concern -- when you brought in the second
17 contractor, was your concern that Visions had done something
18 wrong or was it your concern that they -- you didn't want --
19 you didn't want that to be the issue in this case? Or
20 something else, if it was something else? Why bring in a
21 second contractor, Dan Jones?

22 A. I was concerned about Visions -- the quality of
23 Visions at that point and decided to bring in a second
24 contractor to look at the damages.

25 Q. In the end, when Mr. Jones came up with his number,

1 his estimated cost of repairs, did you make payment based
2 upon that estimate?

3 A. Yes.

4 Q. Did you do it promptly upon receipt of that
5 estimate?

6 A. I believe so.

7 Q. At this point they accepted it?

8 A. Yes. Well, there was -- there was some additional
9 items that were hammered out. There was a subsequent
10 payment, but I believe Mr. Jones' original inspection was in
11 early June.

12 Q. And this wasn't something -- again, this isn't
13 something you jammed down their throats, correct?

14 MR. MURPHEY: Objection. Leading question.

15 THE COURT: It is, but --

16 MR. GEER: I'll withdraw it.

17 Q. Mr. Jones also -- I don't want to confuse you. I'm
18 referring now to Attorney Terry Jones who you referred to
19 earlier. Mr. Murphey asked you a number of questions
20 regarding Terry Jones, and I want to refer you to a letter
21 dated June 5th, which Mr. Murphey showed you -- I'm sorry, I
22 was mistaken. It was June 16th. Mr. Murphey had shown you a
23 letter dated June 16th and -- I'm sorry, but I didn't write
24 down the exhibit number. It was a letter written to Paul K.
25 Geer from T. Warren Jones, June 16th. Mr. Murphey had asked

1 you a question regarding the question asked in that letter.
2 It said, and I'll read it, "At your convenience, I'd like to
3 know more about the process which Amica utilized to select
4 Visions to do the temporary repairs." Now, to the best of
5 your knowledge, as you sit here today, have the temporary
6 repairs that Visions did ever been at issue in this case?

7 A. No.

8 Q. Did you ever get a complaint from the Bordens, Terry
9 Jones, Anthony Parise, or anyone else, that the temporary
10 repairs that Visions did were inadequate?

11 A. Not that I recall.

12 Q. As we sit here today, do you have any reason to
13 believe that's at issue in this case?

14 A. No.

15 THE COURT: Just so I'm clear, do I take it that the
16 term "temporary repairs" is just another way of saying the
17 boarding up and protecting of the house from further damage?

18 THE WITNESS: Correct.

19 THE COURT: In other words, no repair that would in
20 any sense be permanent or that would be there if and when the
21 insureds decided to move back in?

22 THE WITNESS: I'm sorry, say that again.

23 THE COURT: The temporary repairs were repairs
24 simply to maintain the status quo of the house?

25 THE WITNESS: Right.

1 THE COURT: All right.

2 Q. That would include such things as pumping the water
3 out of the basement? The water that the fire department --

4 A. I don't recall exactly what they did. But it
5 would -- there was a hole in the roof, and they patched
6 the -- they put a temporary patch on the roof. That sort of
7 thing.

8 Q. Shoring up the building so it would be safe for the
9 adjusters to go in and take a look at it?

10 A. That's correct. In re-reading the letter, it seems
11 to me that the letter is questioning the expertise of
12 Visions. You could read it that way very easily.

13 MR. GEER: That's all I have at this time, Your
14 Honor.

15 THE COURT: Do you have anything further at this
16 time?

17 MR. MURPHEY: Yes.

18

19 RECROSS-EXAMINATION

20 BY MR. MURPHEY:

21

22 Q. On that last note, you do understand, Mr. Bennett,
23 that Visions did two things in this case, they did the
24 temporary repairs and then they also provided an estimate for
25 Amica -- or at least a letter that supported an estimate?

1 A. Correct.

2 Q. And those are two distinct things?

3 A. Yes.

4 MR. MURPHEY: That's all I have.

5 THE COURT: Thank you, sir. You may be excused.

6 Who would be your next witness?

7 MR. MURPHEY: Mr. Borden.

8 THE COURT: We'll go for about 10 minutes and take a
9 break. Come up on up, Doctor. Would you raise your right
10 hand, please -- first of all, state your full name for the
11 record.

12 THE WITNESS: Jonathan Allen Borden.

13

14 J O N A T H A N B O R D E N, first having
15 been duly sworn, testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. MURPHEY:

19

20 Q. Jon, you've already told us your name. Can you
21 please tell us about your family. You're married?

22 A. My wife's name is Amy.

23 Q. You have children?

24 A. I have three children.

25 Q. How old are they now?

1 A. They're 6, Sarah and Emma, twins, girls; and David
2 is almost 4.

3 Q. Where do you live now?

4 A. Cincinnati.

5 Q. What do you do for a living?

6 A. I'm a neurosurgeon.

7 THE COURT: Just as an aside. Some of the papers
8 you're referred to as a neurologist. I presume that that is
9 an error. You're a neurosurgeon as opposed to a neurologist.

10 THE WITNESS: It's a common confusion

11 THE COURT: Common layman mistake. You're the
12 fellow who operates as opposed to diagnosis.

13 THE WITNESS: Right. They do all the thinking and
14 we do the --

15 THE COURT: You do the cutting. I hope you can
16 think and cut.

17 THE WITNESS: I try to.

18 THE COURT: Go ahead.

19 Q. When did you move to Cincinnati?

20 A. I moved to Cincinnati shortly after December -- just
21 before January 1st of 2006.

22 Q. Where did you live in 2003?

23 A. In Erie.

24 Q. Where were you working at that time?

25 A. At Saint Vincent Health Center.

1 Q. I take it that you had never had a fire before 2003.

2 A. No.

3 Q. You were not familiar with the process of handling a
4 fire loss claim?

5 A. No.

6 Q. Had you ever arranged for any major construction
7 before? Built a house? Had a significant remodeling
8 project?

9 A. No.

10 Q. Where did you live in February of 2003?

11 A. On --

12 Q. What was the address?

13 A. 4838 Wolf Road.

14 Q. When did you move there?

15 A. We moved there the end of August of 2002.

16 Q. Why did you move to Erie?

17 A. I relocated from Boston to take a new job with Saint
18 Vincent as a neurological surgeon.

19 Q. How much did you pay for the house?

20 A. 720,000.

21 Q. Was there anything, other than its nice location,
22 that attracted you to the house?

23 A. Well, it had been made handicapped accessible.

24 Q. Why was that important to you?

25 A. Our daughter, Emma, has significant disabilities.

1 Q. What is Emma's condition? If you could give us the
2 60-second version, Doctor.

3 A. She has a fairly rare chromosome disorder called an
4 inverted duplicated chromosome 15. She was born slightly
5 over a pound, spent four months on a ventilator in a neonatal
6 intensive care unit.

7 Q. As of the age of 3, did she have developmental
8 delays?

9 A. She has profound developmental delays.

10 Q. Does she have any environmental sensitivities that
11 you had noticed?

12 A. Yes.

13 Q. What were those?

14 A. She's very sensitive to certain types of cleaning
15 products, any dust, we don't allow her to get anywhere near
16 smoke, certain perfumes.

17 Q. Do her symptoms include some respiratory problems?

18 A. Yes.

19 Q. Was she living -- was her bedroom in the handicapped
20 accessible area of the house?

21 A. Yes.

22 Q. Who was your house insured with?

23 A. Amica.

24 Q. Do you know anything in particular about the
25 insurance policy that you had purchased?

1 A. Well, we had their top policy. Their most expensive
2 and best policy.

3 Q. It was called the Platinum Choice policy?

4 A. Right.

5 Q. Had you had any claims with Amica before this fire?

6 A. No.

7 Q. So did you know any employees of Amica before this
8 fire?

9 A. No.

10 Q. We know from prior testimony that the fire happened
11 on February 16, 2003. Was that a Sunday?

12 A. Yes.

13 Q. You were home alone?

14 A. Yes.

15 Q. If you could briefly tell the Judge what happened.

16 A. Well, I -- I was on call that weekend, which is why
17 I wasn't in Pittsburgh, and I had just come back from the
18 hospital. I can't remember how long I was actually in the
19 house, but it wasn't for a long time.

20 Q. Were you alone?

21 A. I was alone. And I heard the alarm go off telling
22 me to get out of the house.

23 Q. It was obviously a talking thing?

24 A. Fire, remove -- exit the house immediately.

25 THE COURT: What time was it?

1 THE WITNESS: I later learned approximately 1:00
2 p.m.

3 Q. You don't remember really?

4 A. No.

5 Q. Anyway, what do you recall? Did you see smoke or
6 flames or --

7 A. Well, initially, I didn't see anything. So, instead
8 of listening to this voice, I started to look around to try
9 to see where the so-called fire was coming from. And I was
10 in the kitchen when a blast of smoke hit my face, and I
11 actually became temporarily blinded, except for the fact I
12 was wearing glasses. And so I just dropped down to the floor
13 and scooted out of the house.

14 Q. What did you do then?

15 A. I -- I had my cell phone attached to me, and I
16 called the fire department from the cell phone.

17 Q. Did you watch the fire-fighting efforts?

18 A. For hours.

19 Q. How long did it take for them to suppress the fire?

20 A. Well, it wasn't clear to me that it was entirely
21 suppressed when we left that night, but -- I mean, four hours
22 at least.

23 Q. Did the firemen tell you anything about the fire
24 during the time they were fighting it?

25 A. They believed it was -- started in the basement.

1 Q. Did they tell you anything about the extensive
2 damage to your home while they were fighting the fire?

3 A. Well, at some point we were asked for permission to
4 bulldoze part of the home because they couldn't get the fire
5 out completely.

6 Q. Did you observe them cut holes in the roof or break
7 windows or do anything else to fight the fire?

8 A. Certainly. They cut a large hole in part of the
9 roof. There was actually smoke oozing from the entire roof,
10 even in the other part of the house that didn't have the
11 active fire. They took a sledgehammer to part of the brick
12 wall, and they did extensive -- they smashed all of the
13 windows.

14 Q. There has been, or will be, testimony in this case
15 that this was a very hot fire. Were you able to -- did the
16 firemen tell you anything about the heat generated or --

17 A. Well, at some point one of the firemen came up to me
18 and said, do you have any other gas lines going into the
19 basement -- or the house, because there's something very hot
20 in the basement that we can't put out. And I said, there's
21 no gas going into the house at all. And he said, oh, and ran
22 over to the gas line and turned it.

23 Q. So maybe the gas had been turned on?

24 A. I -- I don't know if he was just checking whether it
25 had been turned off or if it had been inadvertently turned

1 on.

2 Q. You said you were home alone. Where were Amy and
3 the children?

4 A. In Pittsburgh.

5 Q. Did Amy come home that evening?

6 A. Yes.

7 Q. Was she with you at any time while you were -- first
8 of all, what did you do? Did you go to a neighbor's house or
9 what did you do?

10 A. Well, I was watching what they were doing in the
11 driveway for hours, and there were a lot of people that had
12 gathered around. At some point they briefly took me to an
13 ambulance just to make sure I didn't have any problems with
14 smoke inhalation, and I called Amy from there and told her
15 what had happened. And then she drove back up.

16 Q. I'm sorry, did she get to the scene of the fire or
17 did she meet you at the hotel? Or do you remember?

18 A. She was at -- I believe she was at the scene.

19 Q. At some point did you contact Amica to tell them
20 about the fire?

21 A. Yes.

22 Q. When did you do that?

23 A. At some point in the afternoon I walked over to the
24 neighbor's house and called Amica from the neighbor's house.

25 Q. While you were at the scene, do you remember, did

1 you have more than one conversation with an Amica
2 representative?

3 A. I may have had two conversations.

4 Q. What can you remember about conversations with an
5 Amica representative while you were still, you know, at your
6 neighbor's or at the scene of the fire?

7 A. Well, I described to a very nice young woman on the
8 phone what had happened, and she said that she was going to
9 call and get someone to come and take care of it. And they
10 were going to call two people, one was someone to take -- to
11 "board-up" the house, and the second would be an adjuster.

12 THE COURT: Mr. Murphey, we're going to take a short
13 recess.

14 (Pause in the proceedings.)

15 THE COURT: All right, Mr. Murphey.

16 Q. We were talking about your report of the fire to
17 Amica. You said you talked to a very nice woman on the phone
18 maybe once or twice. Do you remember them giving you any
19 instructions with respect to handling the case? Did they ask
20 you to do anything?

21 A. At the second phone call, they told me that
22 Mr. Hardner would be contacting me regarding the immediate
23 protection of the house.

24 Q. Did they explain who Mr. Hardner was?

25 A. Yes.

1 Q. What did they tell you?

2 A. A fire restoration expert.

3 Q. Did you ever talk to Mr. Hardner?

4 A. Yes. He called me on two occasions.

5 Q. During the evening of the fire?

6 A. Yes. He initially explained to me -- do you want me
7 to elaborate?

8 Q. Yes. Please.

9 A. He initially explained to me what -- that he was
10 going to be out to the house to board it up, and also would
11 be going in and he would put things like antifreeze in the
12 pipes to prevent further damage. Because he told me that
13 when it's this cold that you can get secondary damage to the
14 house as a result of the environment.

15 Q. You said that he called you twice?

16 A. Correct.

17 Q. And that was the first phone call?

18 A. Yes.

19 Q. What was the second call? What did he say in the
20 second call?

21 A. He told me that Amica had selected, I guess, Visions
22 instead, and that --

23 Q. To do the emergency repairs?

24 A. To do the emergency repair.

25 Q. Did you talk to him about that decision, and what

1 did he tell you?

2 A. Well, he was very professional. He said, well, you
3 could object if you want. And I asked him if he knew
4 anything about them, and he said he didn't.

5 Q. He said he did not?

6 A. Did not. And at that point I -- I can't remember
7 the timing of this, but I called Mr. Schumann -- or
8 Mr. Schumann had also called me, and I told him what had
9 happened.

10 Q. About the conversations with Hardner about Visions?

11 A. Correct.

12 Q. Did Mr. Schumann say anything about that?

13 A. He said, don't worry about it, I'll take care of it
14 when I get there, and informed me that he would be several
15 days.

16 Q. Now, I take it the house was not habitable.

17 A. Correct.

18 Q. Where did you stay for the next couple of days?

19 A. We were at the Bel-Aire Clarion Hotel.

20 Q. And that was you and Amy?

21 A. Yes.

22 Q. How long was it between the time of the fire and
23 when you were able to get into a rental unit, which we've
24 already heard some testimony about?

25 A. The fire was the 16th, and shortly after the first

1 of March we took -- we moved into the rental house.

2 Q. How were you able to locate a rental house?

3 A. Well, Kathe Rafferty, who is a real estate agent and
4 lives several doors down --

5 THE COURT: That would be Kathe. I think there's a
6 plume on the E or something.

7 MR. MURPHEY: An accent.

8 THE COURT: Go ahead.

9 A. And she came over during the fire, as was half the
10 neighborhood, and she told us that, in fact, there was a
11 house right across from her house that was a rental house and
12 the occupants had just sort of moved out early.

13 Q. In your neighborhood?

14 A. In our neighborhood, and that she would -- she said
15 that that would be a great place for us to move into.

16 Q. And ultimately there is where you moved in?

17 A. Yes.

18 Q. Amica paid for all that, helped to set up the house?

19 A. Yes.

20 Q. And that was a very comfortable place under the
21 circumstances?

22 A. Yeah.

23 Q. Did there come a time when you were able to go back
24 to the house and see the damage to it?

25 A. Over the next several days, yes. The following

1 day -- morning after the fire we went back to the house.

2 Q. I'm going to show you a document I've marked as
3 Exhibit 6.

4 (Plaintiff's Deposition Exhibit No. 6 marked for
5 identification.)

6 A. Yes.

7 Q. Do you recognize that?

8 A. Yes.

9 Q. What is it?

10 A. It's a diagram of the house. The floor plan.

11 Q. The floor plan of the house. I just want to ask you
12 a couple very quick questions about the house. Jon, if you
13 could, show us where was the -- where was the area of the
14 house under which the basement sat? I think can you touch
15 the screen.

16 THE COURT: You can touch the screen and it'll mark
17 it.

18 A. I'm circling this, I think maybe it should go like
19 that. Something like that.

20 Q. So that area of the house has the basement?

21 A. Yes.

22 Q. And that's where the fire started as you understand
23 it?

24 A. Yes.

25 Q. So it's directly below the family room, dining room,

1 kitchen, sunroom?

2 A. Yes.

3 Q. Under the remainder of the house is there a
4 basement?

5 A. A crawl space.

6 Q. Is the crawl space open to the basement?

7 A. Yes.

8 Q. The Judge, in his curiosity, asked about how the
9 fire started, and it was reported to you that it may have
10 been caused by a linseed oil project?

11 A. Yes.

12 Q. Because the Judge was interested before, can you
13 tell him what you know about that.

14 A. I had been finishing -- it might have been some
15 picture frames or I think it was a part for a camera -- an
16 old, wooden camera that I was repairing. And I coated it
17 with some linseed oil, and I know I used a cotton rag to do
18 that, but I didn't have any recollection of what I did with
19 the rag.

20 Q. Now, back to the house. There is a diagram in the
21 lower right-hand side of Exhibit 6 with several bedrooms. Is
22 that the upstairs of the house?

23 A. Yes.

24 Q. That's the second floor?

25 A. Yes.

1 Q. And over which part of the first level does the
2 second level sit?

3 A. -- it's --

4 Q. We'll erase that.

5 A. It's pretty much directly up. So if you take
6 this -- I'll draw an arrow here. I think it sits right on
7 top of that.

8 Q. In fact, I think we can see where it would fit with,
9 I think, the patio.

10 A. Exactly.

11 Q. So there's not two stories throughout the house, but
12 there's two stories on the side of the house away from the
13 basement, correct?

14 A. Yes.

15 Q. And then the basement, I take it, does not sit
16 beneath the garage; is that right?

17 A. Correct.

18 Q. Now, in the lower left-hand side there's two rooms
19 marked, I think maybe, study and sewing or den --

20 A. Yes.

21 Q. -- with some stairs. Where does that sit?

22 A. I'll draw another arrow. Like that.

23 Q. Right over the garage?

24 A. Right. And you can line up the stairwell, here and
25 there. That would line it up exactly.

1 Q. I see. Where is the handicapped accessible area of
2 the house?

3 A. The first floor --

4 Q. I'm going to erase those arrows.

5 A. -- this, this, this.

6 Q. You're circling the bedroom, parlor, and bath area
7 on the right-hand side of Exhibit 6?

8 A. Correct.

9 Q. And that would sit directly below the second
10 story --

11 A. Yes.

12 Q. -- in that part of the house. Did anybody ever tell
13 you what part of the basement the fire started in? Whether
14 it was directly below the dining room? Directly below the
15 kitchen? If you know; if you don't know, that's fine.

16 A. I don't know.

17 Q. We've seen some photographs -- at least in our
18 opening statement, we looked at some, can you tell the Judge
19 generally what areas of the house sustained the most
20 catastrophic damage.

21 A. Well --

22 Q. The basement, obviously.

23 A. And right above it was, you know, completely
24 damaged.

25 Q. When did you go back to the house the first time?

1 A. The morning after the fire. The 17th.

2 Q. Can you estimate for me how many times you were in
3 the house after the damage?

4 A. Totally?

5 Q. Yes. I mean, quite a few times?

6 A. Sure.

7 Q. You were able to observe the damage inside the
8 house?

9 A. Yes.

10 Q. Did you notice the smoke smell throughout the house?

11 A. Yes.

12 Q. For example, in the areas of the house furthest from
13 the basement, such as the second floor on the right-hand side
14 of the picture, as I'm pointing with my pen, could you notice
15 the smoke smell up there?

16 A. Yes.

17 Q. Did it permeate the entire house?

18 A. The entire house.

19 Q. In the days after the fire -- strike that. I'm
20 going to ask you to identify an exhibit we have marked as
21 Exhibit 1, a binder of photographs. Do you recognize these,
22 Jon?

23 (Plaintiff's Exhibit No. 1 marked for
24 identification.)

25 A. Yes.

1 Q. Do they depict the damage to the house in various
2 places and at various times?

3 A. Yes.

4 Q. Now, when you went back to the house initially, was
5 there anybody doing emergency repairs?

6 A. Yes.

7 Q. Who was that?

8 A. Brian Seifert.

9 Q. Did you talk to Mr. Seifert?

10 A. Yes. And he and several of his associates were
11 pumping water out of the basement. The basement was
12 essentially completely filled with water.

13 Q. Was this the day after the fire?

14 A. Yes.

15 Q. What else was Mr. Seifert doing? Did you notice
16 anything else in particular?

17 A. That's really it. He told me that he had been
18 instructed to pump the water out, and the fire inspector was
19 unable to get down into the basement until he did that.

20 Q. Did you talk to him about the fire? Did he tell you
21 anything about it? That you remember.

22 A. I'm sure we did.

23 Q. Did you know how Mr. Seifert had been hired? Who
24 had brought him there?

25 A. Well, when he described the need for the fire

1 inspector to get down there, I thought that the fire
2 department had directed him to do what he was doing.

3 Q. I take it that you did not arrange for Mr. Seifert
4 to be at the scene.

5 A. I never spoke to him before I talked to him at the
6 house.

7 Q. Did you know him or had you ever heard of his
8 business before?

9 A. No.

10 Q. Was there anything about your initial contact with
11 Mr. Seifert at the scene that caused you any concern about
12 his qualifications or abilities?

13 A. Well, in terms of boarding up the house, I mean, it
14 seemed like it was done competently, and he was pumping water
15 out of the basement and that was all fine. I knew he was
16 going to go in and put some temporary shores, because the
17 ceiling or joists of the floor were dangerous, and all that
18 seemed like something that certainly had to be done. He told
19 me that he -- he then got into restoration issues and told me
20 that he was going to take everything out of the house, and do
21 ozone cleaning, and talked about his wife and this and that,
22 and he started talking about a variety of things.

23 Q. Did he talk to you at all about protecting the pipes
24 at all, put antifreeze in?

25 A. Well, I asked about that, he hadn't done it.

1 Q. Did he tell you why he hadn't done it?

2 A. I didn't press the issue. I just asked if --

3 Q. Did he tell you anything about how he would
4 recommend repairing the house? Repairing the structure in
5 any way?

6 A. Well, he told me -- I think he said he could get it
7 to be as good as new in six months, and I was just listening,
8 and then he said that he would build and match the brick
9 exactly in the area where the sledgehammer had taken out half
10 the wall and that he could do all of those things.

11 Q. Did you discuss with Mr. Seifert at all why
12 Mr. Hardner was not on this assignment, or that didn't come
13 up?

14 A. No. No.

15 Q. Did you talk to John Schumann at all before he
16 arrived in Erie?

17 A. Yes.

18 Q. How many times?

19 A. Well, once or twice. Perhaps twice.

20 Q. Do you recall the content of the conversations with
21 Mr. Schumann before he arrived?

22 A. Well, actually, during the fire and right
23 afterwards, all sorts of information started pouring in to
24 us, including where we should live and who we should get to
25 fix the place. And so -- we had neighbors on either side of

1 us who were either involved in building a house or had just
2 built a house. And the -- Amy Burkowitz, who was friends of
3 my wife, said they were very pleased with Laughlin, and they
4 were actually building a house right next door to us. So
5 they were going back and forth.

6 Q. That was Laughlin Brothers Contractors?

7 A. Right. They had contractors that were going back
8 and forth at the site, and said, oh, boy, that's a big deal.
9 And I called one of them and talked to him about it, and he
10 said -- I asked him about Visions, and they didn't know
11 anything about them. He said he thought that he was a roofer
12 but that he didn't know that he did fire restoration work. I
13 told Mr. Schumann my concerns, and he told me not to worry
14 about anything, just wait until he got there and he would
15 sort everything out.

16 Q. Did you also identify for Mr. Schumann the fact that
17 you had talked to a contractor?

18 A. Yes. But that was just after he arrived in Erie.

19 Q. We'll talk about that in a minute. Did you talk to
20 Mr. Schumann about -- strike that. By the way, just
21 generally speaking, was Mr. Schumann nice and cooperative and
22 pleasant with you?

23 A. Well, he was very reassuring and very pleasant, yes.

24 Q. I mean, he didn't do anything to personally offend
25 you? He wasn't mean or objectionable?

1 A. No. Never.

2 Q. When he arrived, did he tour the house with you or
3 meet with you? What did he do?

4 A. Well, we met, and I don't recall whether he toured
5 the house first. I think he may have before meeting with us
6 initially.

7 Q. What do you remember about the first meeting with
8 Mr. Schumann?

9 A. We were in the restaurant at the Bel-Aire Clarion,
10 and we had a conversation with him and -- just about what was
11 going on.

12 Q. Did you talk to Mr. Schumann at that time about
13 Mr. Seifert?

14 A. Well, we raised the concerns based on the brief
15 investigation that I had done that people didn't know him.
16 And we gave him the names of the Laughlin Brothers as well as
17 David Haller as being two contractors that came very highly
18 recommended by different people.

19 Q. Mr. Haller had also worked on neighbors' homes, so
20 you knew of him?

21 A. Well, he had built a home on the other side of us,
22 and had done significant restoration and contracting work on
23 another home very close to us.

24 Q. Did Mr. Schumann take their names?

25 A. He did.

1 Q. What did -- did he write them down?

2 A. He wrote them down in his notebook.

3 Q. Did he carry a notebook with him throughout the --
4 your involvement with him?

5 A. I don't know throughout the involvement, but I
6 remember he wrote the names down in a notebook at that
7 meeting.

8 Q. Did Mr. Schumann encourage you to contact Laughlin
9 Brothers or Haller or did he offer to contact them himself at
10 that time?

11 A. Well, he said that it was too early to do that, and
12 that he would at the appropriate time. He also told us that
13 he had a lot of work to do to do -- to go through the house
14 room by room with a computer program that he had on his
15 laptop that he would be making measurements and that he
16 needed some "warm bodies" to help him move things out of the
17 way and to allow him to do his job.

18 Q. Did he tell you that your identification of a
19 contractor to work with him was necessary for him to develop
20 an estimate of the repairs?

21 A. No. He actually asked us not to get someone at that
22 immediate time.

23 Q. Did Mr. Schumann tell you about his relationship
24 with Amica?

25 A. Well, he said that he worked essentially exclusively

1 for Amica, but he was not an employee specifically. That he
2 was a contractor, or whatever word you want to use. An
3 independent adjuster.

4 Q. Did he attempt to assure you in any way that you
5 would be treated fairly?

6 A. Well, he told us that he viewed his job as working
7 for us and not for the insurance company. That he would take
8 care of everything that needed to be done.

9 Q. Was Mr. Schumann able to tell you anything about --
10 strike that. Did Mr. Schumann tell you that he was going to
11 work with Mr. Seifert to develop an estimate?

12 A. No. But he needed some of Mr. Seifert's men to do
13 things like put heaters into various rooms so that he could
14 go through the house and to -- do his work.

15 Q. So you, at that time, didn't understand that he
16 would be using any contractor to help him develop an
17 estimate; is that correct?

18 A. Correct.

19 Q. The Judge has already taken judicial notice that a
20 devastating fire like this is going to be difficult for a
21 family to deal with, so we don't need to get into that too
22 much.

23 Did Mr. Schumann ever approach you and say, I need
24 your help to develop an estimate?

25 A. No. He told us that he would do that, and he sort

1 of didn't want us in the way, I think. To allow him just to
2 go through room by room and do what he needed to do.

3 Q. At any time in the process, did Mr. Schumann suggest
4 that you get a public adjuster or a lawyer or anybody else to
5 assist you with this process?

6 A. Well, he specifically recommended against it.

7 Q. What did he say?

8 A. He said that they're just the insurance business
9 equivalent of an "ambulance chaser" and that they would take
10 our money and it wasn't going to affect his estimate in any
11 way, shape, or form.

12 Q. Now, Mr. Schumann, we know, ultimately created an
13 estimate of repair of about \$329,000 --

14 THE COURT: Let me interrupt you for a second.
15 Doctor, did the subject -- was the subject of possibly
16 retaining a public adjuster brought up by you, if you
17 remember, or was it brought up by Mr. Schumann in the first
18 instance?

19 THE WITNESS: I'll explain that. I had no idea what
20 a public adjuster was at the time. The day after the fire
21 occurred, while we were on the site, it was snowing and some
22 public adjusters from a company called National-something
23 showed up and handed me a pamphlet and gave me information on
24 their services. And I had no idea who they were or how they
25 got our name or anything. And I told this to Mr. Schumann,

1 that these people showed up, and that's how the discussion
2 occurred.

3 THE COURT: All right. Go ahead.

4 Q. He ultimately created the estimate that I just
5 mentioned. Did you get a copy of his estimate of repair?

6 A. I ultimately got a copy.

7 Q. Before Mr. Schumann sent you his estimate of repair,
8 did you have any concerns about the quality of the work that
9 Mr. Schumann was doing?

10 A. No.

11 Q. You said you ultimately got a copy of the estimate.
12 Explain the process of having the estimate -- of obtaining
13 the estimate.

14 A. Well, we were in Pittsburgh, he called me on my cell
15 phone --

16 Q. Just by way of explanation, you were in Pittsburgh
17 with the rest of your family?

18 A. At Amy's parents'.

19 Q. This is before you had been resettled into the
20 house?

21 A. Correct.

22 Q. The rental house?

23 A. Correct.

24 Q. So to be together with the family you were in
25 Pittsburgh?

1 A. Right.

2 Q. Because Amy was staying with her parents --

3 A. Right.

4 Q. -- with the kids?

5 A. My mother came out, took our hotel room, and she was
6 working on getting the house ready, and Amy and I were in
7 Pittsburgh at the time. And he called me and I told him
8 that, first of all, I didn't have a fax at their house or any
9 way to get his estimate, but I directed him to my brother,
10 who's a lawyer with The Hartford -- he's not -- he works in
11 their technology section, but nonetheless, he works there.
12 And he took the initial fax of the estimate.

13 Q. It was faxed to your brother in Hartford?

14 A. I believe it was faxed. I assume it was faxed.

15 Q. But it was sent to him first?

16 A. Correct.

17 Q. At your request?

18 A. At my request.

19 Q. Just so the Judge understands the whole context,
20 your brother is an attorney with The Hartford in Hartford,
21 but he doesn't handle claims?

22 A. Right.

23 Q. So what happened then?

24 A. Well, my brother showed the estimate to people in
25 the claims department at The Hartford, who outlined a number

1 of issues with the estimate to him. And he was in contact
2 with Mr. Schumann regarding the errors and omissions in the
3 estimate.

4 Q. So did your brother tell you about learning that
5 there were errors and omissions in the estimate?

6 A. Yes.

7 MR. GEER: Objection. This is all hearsay, Your
8 Honor.

9 MR. MURPHEY: Your Honor, it's offered for the
10 effect it has on the hearing rather than the substance.

11 THE COURT: As opposed to what he did you mean?

12 MR. MURPHEY: Right.

13 THE COURT: I mean, it's not offered for the truth
14 of the matter asserted?

15 MR. MURPHEY: No.

16 THE COURT: All right. I'm not taking it for the
17 truth. It's overruled.

18 Q. At any rate, Rick told you some people that he had
19 reviewed the estimate with raised some concerns?

20 A. Yes.

21 Q. Your brother's name is Rick. I'm not sure the
22 record represents that.

23 What did you do then?

24 A. Well --

25 Q. Did you speak with Mr. Schumann about the problems

1 in the estimate that had been identified by Rick?

2 A. I told Mr. Schumann initially that I had no idea
3 about all this stuff. I had absolutely no experience with
4 estimates or what would need to be done or what ought to be
5 done, and that while Rick didn't have a lot of experience
6 either, he at least was in contact with people that did. And
7 I gave him authority to speak to Rick about this on my
8 behalf. So I told him I would use my brother on my behalf to
9 try to get this resolved in a more intelligent fashion than I
10 could do.

11 Q. And then, did Rick tell you about any conversations
12 he had with Mr. Schumann about the problems that they had
13 identified in the estimate?

14 A. Yes, he did.

15 Q. What did he tell you?

16 A. He told me that he wasn't willing to acknowledge
17 even the most obvious, and some minor, omissions in the
18 estimate, and indicated that he wasn't willing to negotiate
19 on any part of the estimate.

20 Q. "He" being Mr. Schumann?

21 A. Correct.

22 THE COURT: Did Mr. Schumann tell you that, or did
23 your brother tell you that's what Mr. Schumann said?

24 THE WITNESS: My brother told me that's what
25 Mr. Schumann said.

1 Q. Do you remember whether you -- you personally talked
2 to Mr. Schumann about the problems that Rick had identified
3 in the estimate? If you remember; if you don't --

4 A. I don't know. There's a lot of other stuff going on
5 at that point, and I -- I may not have, myself. I don't
6 specifically recall that.

7 Q. So you have described Rick's conversation with
8 Mr. Schumann in which Mr. Schumann had indicated that he was
9 not going to change his estimate, correct?

10 A. Correct.

11 Q. So what did you do next? Do you remember?

12 A. Well, around that time I had been getting increasing
13 amounts of advice from friends and family that we ought to
14 get a public adjuster involved.

15 Q. Had anybody suggested that to you before
16 Mr. Schumann's estimate was delivered?

17 A. Yes.

18 Q. Why had you not taken their advice --

19 A. Well, I didn't see any need to, and I thought that
20 the best thing to do -- I didn't see any problem, and I
21 thought the best thing to do would be to see if we can let
22 him do his work. See what he had to say. I had no reason to
23 question him.

24 Q. At the time you initially received Mr. Schumann's
25 estimate, were you aware that anybody else was involved in

1 the claim for Amica?

2 A. No -- well, aware that anyone else -- I'm sorry, for
3 Amica?

4 Q. Yes.

5 A. Mr. Bennett.

6 Q. Did you call Mr. Bennett or did Rick call
7 Mr. Bennett to ask him about the problems in the estimate and
8 whether there could be anything done about it?

9 A. No.

10 Q. At that time instead you decided to retain a public
11 adjuster?

12 A. Yes.

13 Q. Who did you hire?

14 A. Anthony Parise of -- well, we hired Giordano &
15 Associates.

16 Q. And one of their employees or contractors is Anthony
17 Parise?

18 A. Anthony Parise, right.

19 Q. How was it that you chose that firm?

20 A. Well, my family's from Connecticut, and Giordano,
21 and Anthony in particular, had just gotten done taking care
22 of a claim at Yale Medical School, and the doctors there were
23 very pleased with the way he handled it. It apparently was a
24 very complicated claim, and he did an excellent job in their
25 opinion.

1 Q. Your parents live in Hartford?

2 A. Yes.

3 Q. Your brother does, too?

4 A. Yes.

5 Q. Can you tell me, why was it -- if you can summarize
6 for the Judge, why was it that you decided to hire a public
7 adjuster at that point rather than take another step?

8 A. I was told that I didn't know what I was doing and I
9 needed to get someone to come in and help.

10 Q. By your family?

11 A. Correct.

12 Q. Do you know, was Mr. Schumann -- Mr. Schumann had
13 completed his estimate. Do you know whether he was
14 continuing to work on supplementing the estimate or further
15 developing it in any way?

16 A. Well, at that point he left Erie. So I don't know
17 what work he was doing.

18 Q. So, by the time you had obtained the estimate -- or
19 at least by the time Rick and Mr. Schumann had talked about
20 the estimate, Mr. Schumann was gone from Erie?

21 A. Correct.

22 Q. He had left town?

23 A. Correct.

24 Q. Did Mr. Schumann ever tell you, or to your
25 knowledge, Rick, that he had reviewed the estimate with

1 Mr. Seifert?

2 A. He told Rick that, I believe.

3 Q. Did you ever speak with Mr. Seifert about his review
4 of Mr. Schumann's estimate?

5 A. Yes.

6 Q. When was that?

7 A. That would have been sometime -- a number of months
8 later.

9 Q. What did Mr. Seifert tell you?

10 A. Mr. Seifert apologized for what had happened to us,
11 and said that he felt very sorry for us and that he felt that
12 he was in the middle of Amica and ourselves and that he
13 didn't make the estimate. All he said was that for the
14 specific work quoted he could -- he would do that work for
15 the price, but he didn't say that he agreed on the scope of
16 the work.

17 Q. He told you that he didn't agree that that's what
18 was necessary to put the house in its prefire condition?

19 A. Correct.

20 Q. Did you participate with Mr. Parise at all in the
21 development of his estimate of the loss?

22 A. No.

23 Q. Ultimately you received a copy of Mr. Parise's
24 estimate, correct?

25 A. Yes.

1 Q. And that would be in the record that that was more
2 than twice Mr. Schumann's estimate, correct?

3 A. Correct.

4 Q. There's already been testimony about your receipt of
5 a payment from Amica by letter of March 11, 2003. We've
6 already seen it a couple of times today, but I want to look
7 at it one more time. This is the letter of March 11th marked
8 Exhibit 3-15, and you received this from Mr. Bennett; is that
9 correct?

10 A. Yes.

11 Q. And it enclosed the check for the amount indicated,
12 correct?

13 A. Yes.

14 Q. And there was also a reference at the bottom of the
15 letter to a policy provision regarding --

16 A. Yes.

17 Q. -- protecting the house; is that correct?

18 A. Yes.

19 Q. First of all, when you read the section of this
20 letter about the policy provision, what did you understand it
21 to mean?

22 A. Is that the second section? Duties after loss?

23 Q. That's correct. That's what I was asking you about.

24 A. I was alarmed.

25 Q. What was it that alarmed you?

1 A. I thought it was specifically the job of Visions,
2 who had been hired by Amica, to protect the house against
3 further damage. So I was alarmed that that -- that something
4 wasn't being done that should be done.

5 Q. With respect to the first paragraph of the letter,
6 which describes the payment that's being made, did you
7 interpret this letter as sending you a preliminary payment or
8 one that was further negotiable?

9 A. Based on this, I didn't have any knowledge of how to
10 interpret it. So I consulted with Mr. Parise and my brother.

11 Q. What did they tell you to do?

12 A. Well, Rick was concerned about some language on the
13 check itself --

14 MR. GEER: I don't have objection to him testifying
15 regarding what someone told him who is going to be in court
16 to testify, because Mr. Parise --

17 THE COURT: I'm having some difficulty hearing you.

18 MR. GEER: Again, Mr. Murphey is trying to elicit
19 hearsay evidence. And I do not have as much concern about
20 Mr. Parise because I understand he's going to be here to
21 testify, and I can ask him questions. But as to Rick Borden,
22 I understand he's not going to be here to testify.

23 MR. MURPHEY: Again, Judge, this is offered for the
24 impact on the listener. About why he did the things he did.
25 Not necessarily the truth of what they're telling him.

1 THE COURT: I can assure you that that's the limited
2 basis I'm taking it on, and with respect to either of those
3 gentlemen, I am not considering the testimony for the truth
4 of the matter. Go ahead.

5 MR. MURPHEY: Thank you, Your Honor.

6 Q. At any rate, the question was, why is it that you
7 declined the check and sent it back to Amica?

8 A. Well, we talked about it, and Rick had some
9 concerns, he hadn't reached any conclusion, but he wanted to
10 investigate it and was concerned that by signing the check we
11 might be agreeing that that was -- that we were agreeing with
12 the estimate potentially. Mr. Parise felt that the amount
13 was too low for us to get started on any repairs, in any
14 case, and that there was no real point in our accepting the
15 check if there were concerns about it until these issues were
16 clarified. Based on advice, we sent the check back.

17 Q. Did Mr. Parise tell you whether he had consulted
18 with Mr. Seifert about Mr. Schumann's estimate?

19 A. Yes.

20 Q. What did he tell you?

21 A. He had spoken with Mr. Seifert.

22 Q. Did he tell you that Mr. Seifert agreed with
23 Mr. Schumann's estimate?

24 A. He -- he -- he said that Mr. Seifert -- I think
25 substantially the same thing that Mr. Seifert told me. Do

1 you want me to repeat it?

2 Q. No. That's okay. We have that. Did Mr. Parise
3 tell you whether he thought that Mr. Schumann's estimate was
4 adequate to remove all of the hidden soot and smoke and the
5 smoke smell from the house?

6 A. He told me.

7 Q. What did he tell you?

8 A. He told me that it was not adequate.

9 Q. I'm sorry?

10 A. He told me that it was inadequate.

11 Q. Was the smell of smoke throughout the house a
12 concern of yours with regard to whether you were going to
13 accept that scope of the loss?

14 A. It was a big concern.

15 Q. Why was that?

16 A. Well, because we wanted the house restored to its
17 preloss condition.

18 Q. Now, before -- strike that. We've heard testimony
19 about the meeting that was held at the house on April 15th of
20 2003. Did you participate in that meeting?

21 A. No.

22 Q. Was Mr. Parise there on your behalf?

23 A. Yes.

24 Q. Were you told what happened at the meeting?

25 A. Yes.

1 Q. By who?

2 A. By Mr. Parise.

3 Q. Was it the information from Mr. Parise that you used
4 to put in the Insurance Department complaint that we've
5 already seen?

6 A. Partially.

7 Q. What other sources of information did you have for
8 that complaint?

9 A. Well, we had direct information, and it was a
10 pattern of not being -- willing to concede even the smallest
11 points at any point during the discussions.

12 Q. What small points are you talking about?

13 A. Well, even, for example, things that were very
14 obvious, like the lack of a provision for plumbing in the
15 basement.

16 Q. The Schumann estimate didn't have that?

17 A. Didn't have that.

18 Q. Was that brought to Mr. Schumann's attention?

19 A. Yes.

20 Q. Was it brought to Mr. Schumann's attention right
21 after you received your estimate?

22 A. Correct. That's one of the main things that --
23 when -- that Rick had identified to him.

24 Q. To your knowledge, was everything that you set forth
25 in that Insurance Department complaint accurate?

1 A. Yes.

2 Q. After the April 15th meeting, did Amica ever come to
3 you and tell you that they were going to revise
4 Mr. Schumann's estimate and pay an additional amount to you?

5 A. What was the time frame again?

6 Q. After the April 15th meeting, but before the next
7 contractor to look at the house.

8 A. No.

9 Q. They didn't tell you that they thought there was
10 \$20,000, or some other amount, that would be a supplemental
11 payment?

12 A. No.

13 Q. Ultimately Amica demanded appraisal of the house; is
14 that correct?

15 A. Yes.

16 Q. What did you do then?

17 A. We obtained legal counsel.

18 Q. After that, did you also obtain -- or did you also
19 hire another contractor to take a look at the house and give
20 you an estimate?

21 A. Yes. I'm not even sure if it's after that. At some
22 point -- I identified the two names, David Haller and the
23 Laughlin Brothers, early on, and we had selected David Haller
24 as the person we wanted to work with. And I started to have
25 discussions with him at some point, but I couldn't tell you

1 the exact date, because the first few discussions were
2 perhaps informal. I had him come out and look at the house
3 and tell me what he thought. Just to get a sense of whether
4 or not -- who was being reasonable here.

5 Q. Mr. Haller is going to testify, but, what did
6 Mr. Haller tell you about the scope of the work necessary to
7 repair the house?

8 A. He said that it would be very large.

9 Q. Did he give you an estimate?

10 A. He gave us a written estimate, yes.

11 Q. Mr. Geer referred to that in his opening statement
12 as a hidden estimate. Did you ask Mr. Haller to not give
13 that to Amica or not distribute it to anybody?

14 A. No. This is the first time I knew that it was not
15 known to anyone.

16 Q. You did see the proposal though?

17 A. Yes.

18 Q. His estimate. I think he called it a proposal.
19 What was the amount that he estimated for you?

20 A. \$700,000.

21 Q. The appraisal procedure, did that ever occur?

22 A. No.

23 Q. What did happen after Amica had demanded appraisal?

24 A. Well, I believe that Attorney Jones had ongoing
25 discussions with Attorney Geer.

1 Q. Ultimately did Amica hire another contractor?

2 A. Yes.

3 Q. Did you ever see that contractor's estimate?

4 A. Yes.

5 Q. Did Mr. Parise express to you an opinion on that
6 estimate?

7 A. Yes.

8 Q. Because I take it you're still not -- don't feel
9 qualified to read and interpret these estimates and decide
10 whether appropriate or not.

11 A. I'm still not.

12 Q. Did Mr. Parise tell you that he found that estimate
13 to be low, but more reasonable?

14 A. Yes. I think he -- he was still somewhat defensive
15 of his original estimate, but said that the scope was similar
16 to what he was saying and that one -- different people could
17 argue about the different costs. Mr. Haller was also closer
18 to Mr. Parise.

19 Q. So ultimately you chose to settle the claim?

20 A. Yes.

21 Q. And the agreed-upon payment for the dwelling was
22 \$553,000?

23 A. Yes.

24 Q. Mr. Borden -- or Dr. Borden, you had retained --
25 strike that. Off the record for a second.

1 (Discussion held off the record.)

2 THE COURT: You have a list -- you have an itemized
3 list of various --

4 MR. MURPHEY: Yes.

5 THE COURT: -- uncompensated damages; is that right?

6 MR. MURPHEY: That's correct.

7 THE COURT: Primarily in the nature of compensatory
8 loss?

9 MR. MURPHEY: Yes. But they're continuing because
10 they're incurring attorney's fees as we speak.

11 THE COURT: Put it this way: I will defer in this
12 instance to Mr. Geer. Is it your preference that some proof
13 get put on here against the possibility that there can't be a
14 stipulation?

15 MR. GEER: My suggestion in chambers is -- my
16 feeling is I would just prefer that it at least be placed on
17 the record. As I told the Court, I don't have any contrary
18 evidence.

19 THE COURT: Let's go ahead and do it.

20 MR. MURPHEY: That's also included in the summary of
21 the bad faith damages, but they -- you know --

22 MR. GEER: I guess my suggestion is that we put in
23 the numbers and not the exhibit.

24 MR. MURPHEY: That's fine. And the interest is
25 wrong.

1 Q. You hired a law firm to represent you with regard to
2 the underlying fire loss claim, correct?

3 A. Yes.

4 Q. That was the McDonald Illig Firm, correct?

5 A. Yes.

6 Q. They charged you fees of \$15,383.50 in pursuit of
7 that?

8 A. Yes.

9 Q. And the costs of litigation in the underlying case
10 were \$425.51?

11 A. Yes.

12 Q. And you paid Mr. Parise a percentage of the amount
13 that you ultimately recovered; is that correct?

14 A. Yes.

15 Q. You paid him \$61,135.55?

16 A. Yes.

17 Q. And you paid Mr. Haller \$2,000 to develop an
18 estimate in this case?

19 A. Yes.

20 MR. MURPHEY: The rest of them, Your Honor, would be
21 bad faith damages, which will be subject to a hearing.

22 THE COURT: All right.

23 MR. MURPHEY: I have just a couple of things to
24 clean up.

25 Q. Dr. Borden, you ultimately received copies of all

1 the estimates that we've talked about today; John Schumann's
2 estimate of 2/27/03, Mr. Parise's estimate of 3/9/03,
3 Mr. Parise's revised estimate also dated 3/9/03, Mr. Haller's
4 estimate dated 6/11/03, and Mr. Dan Jones, the contractor who
5 Amica hired, his estimate of 6/23/03, and they are set forth
6 in this binder. Do you recognize those?

7 A. Yes.

8 MR. MURPHEY: That's Exhibit 2. And we've already
9 identified the other exhibits. Judge, I would move for
10 admission of Exhibit 1, which is the photograph binder;
11 Exhibit 2, which is the estimates binder; Exhibit 6, which is
12 the diagram of the house, and that's all.

13 (Plaintiff's Exhibit No. 2 marked for
14 identification.)

15 THE COURT: Those are admitted.

16 MR. MURPHEY: Thank you, Your Honor. Thank you very
17 much, Jon. I don't have anything else.

18 THE COURT: All right, Mr. Geer.

19
20 CROSS-EXAMINATION

21 BY MR. GEER:

22
23 Q. Good afternoon, Dr. Borden.

24 A. Good afternoon.

25 MR. GEER: I believe I'm on Exhibit A-5 --

1 THE COURT: I'm sorry, Exhibit A-5?

2 MR. GEER: I believe my next exhibit is A-5.

3 Q. Dr. Borden, generally, are you in agreement that
4 throughout this claim period Amica kept in pretty close touch
5 with you to tell you what was going on with the claim?

6 A. No.

7 Q. What way would you disagree with that? Do you
8 disagree with my statement that Amica kept in pretty close
9 touch with you to tell you what was going on?

10 A. Well, in certain aspects, yes; but in other aspects,
11 no.

12 Q. What aspects do you disagree?

13 A. Just a variety of aspects about what they thought,
14 about who they were using, or what they -- their obligations
15 they thought were supposed to be.

16 Q. Well, if --

17 A. What their concerns were regarding us.

18 Q. If I limit my question to you, what they were paying
19 for, what they needed for you to do, what estimates they had
20 received, and that type thing, would you agree with me they
21 were sending you regular correspondence on these issues?

22 A. Yes.

23 Q. Did you ever have a time during this claim where you
24 felt that you didn't know who to call at Amica or you didn't
25 know who to talk to at Amica if you had a question?

1 A. Yes.

2 Q. At what point did that occur?

3 A. Well, definitely right before the time when we sent
4 the letter to the insurance commissioner was one.

5 Q. You wouldn't have known who to call if you had a
6 question?

7 A. Maybe not a question, but I -- I didn't know why
8 Amica wasn't responding to the errors and omissions that we
9 were continuing to raise through my consultants about the
10 issues, and so we weren't getting a response and I was very
11 frustrated.

12 Q. I understand. I'm going to ask that you try to --
13 I'm trying to make my question very narrow. And I realize my
14 first question wasn't very narrow, and your response to that
15 reminded me of that fact. So now I'm trying to make my
16 questions very narrow. I hear you saying over the last few
17 hours that you had frustrations and you had concerns. My
18 question to you was, was there ever a time during this period
19 where you didn't have the name of an Amica representative
20 that you could have called with your question?

21 A. There was always a time I had the name of a
22 representative.

23 Q. Let me start off with what I marked as Exhibit A-5,
24 this is a letter dated February 18th. That would be two days
25 after the fire, correct?

1 (Defendant's Exhibit A-5 marked for identification.)

2 A. Yes.

3 Q. This letter indicates that the investigation had
4 been assigned to John Schumann --

5 THE COURT: Once again, this is just in the interest
6 of keeping us moving down the road at an appropriate speed
7 and not going slower than we have to, let me ask Mr. Murphey
8 this question: Mr. Murphey, as I understand it, it is not
9 part of your bad faith claim here that Amica's alleged bad
10 faith is based upon a failure to respond promptly; is that
11 correct?

12 MR. MURPHEY: That's correct, Your Honor.

13 THE COURT: I take that as a stipulated binding
14 fact. That having been said, you're free to sketch out some
15 background, but, as I understand it, this is not a delay case
16 per se. The claim is -- maybe I can get an agreement from
17 both of you, so we'll really target this thing. As I
18 understand it, the claim is that at a particular point in the
19 adjusting process, Amica became possessed of sufficient
20 knowledge from which they knew or reasonably should have
21 known that it was reckless not to agree to pay -- not to
22 agree to pay for the additional work that would be occasioned
23 by knocking the walls down because of the soot. Isn't that
24 the essence of this whole claim, Mr. Murphey?

25 MR. MURPHEY: It is, Your Honor.

1 THE COURT: Do you agree with that as well?

2 MR. GEER: I agree with that.

3 THE COURT: That's how I see it. I'm not going to
4 lead you folks around by your nose as to how to ask questions
5 consistent with that, but keep it in mind, because I think we
6 might be able to shorten up -- and let me ask one other
7 question on it because at some point when I'm doing an
8 opinion on it, it'll be helpful. I take it from Amica's
9 standpoint that it is your position that it was not
10 unreasonable within a bad faith sense to have taken the
11 position that it was possible to restore the house to its
12 prefire condition without knocking the walls down, but
13 instead, doing what Mr. Schumann initially proposed; is that
14 correct?

15 MR. GEER: That's correct.

16 MR. MURPHEY: And it's -- your position is precisely
17 the opposite?

18 MR. MURPHEY: That's right.

19 THE COURT: As an engineering matter or restoration
20 matter or policy matter that is bad faith?

21 MR. MURPHEY: And the evidence that we tried to
22 present is the accumulating information that Amica is getting
23 to suggest that that original estimate was too low.

24 THE COURT: That focuses the inquiry, if it needed
25 any more focus. Go ahead.

1 MR. GEER: It does, Your Honor. If I can just
2 respond to that, however, this is a case where the Plaintiffs
3 have requested punitive damages. Punitive damages call into
4 question the state of mind of Amica, and I don't think the
5 state of mind can be measured entirely in a punitive damage
6 case on one point. I don't know that we can stop the clock
7 at one point in time and say, as of that moment, did they do
8 something wrong. Because in the overall context of the
9 claim, the question is, was the overall claim handled in bad
10 faith. And in this case, on that particular issue, what is
11 there in the case that would indicate that ultimately we got
12 it right.

13 THE COURT: I'm not saying you're necessarily wrong,
14 nor am I going to limit your proof, because I do think the
15 bad faith case requires an overall context. But as I view
16 it, it's the Plaintiff's position that that's the straw the
17 broke the bad faith's back; is that right?

18 MR. MURPHEY: That's right.

19 Q. Dr. Borden, I'm going to move through this as
20 quickly as I can, and I'm going to mark exhibits and I will
21 ask you some questions to try to move things along. I am not
22 going to try to rush you through it. If you need to read any
23 of these letters, I will put in front of you, you just tell
24 me if you need time. I understand it's a little cumbersome
25 to read letters into the record. Very often in trials that's

1 what we do. But in order to save some time I'm going to mark
2 an exhibit, I'll put it on the screen, I'll ask you
3 questions, and if you need to look at the exhibit in order to
4 answer my question, please feel free to do that and I will
5 slow down. Is that fair?

6 A. Yes.

7 Q. I marked Exhibit A-5. My question is, were you
8 given a document right away, two days after the fire, which
9 came from Amica guiding you through reconstruction?

10 A. Yes.

11 Q. It was a pamphlet?

12 A. Yes.

13 Q. Did you ever read it?

14 A. Yes.

15 Q. I thought you said in your deposition you didn't
16 recall doing that?

17 A. I still don't recall reading it, but I believe I
18 read it at some point.

19 Q. You don't recall whether you did or not?

20 A. I don't recall any of the details in the document.
21 I recall seeing the document.

22 Q. Ultimately, we know you did not reconstruct your
23 house, correct?

24 A. Correct.

25 Q. Now, you had purchased this house, what, just months

1 really before the loss?

2 A. Yes.

3 Q. For how much?

4 A. 720,000.

5 Q. And then, at the end of the day -- at the end of,
6 what, 2004 you demolished the house, correct?

7 A. Yes.

8 Q. You completely levelled it?

9 A. Yes.

10 Q. You sold the lot that it was on, correct?

11 A. Yes.

12 Q. And you received \$180,000 for the lot alone,
13 correct?

14 A. Yes.

15 Q. So as you sit here today, you have received all the
16 money that Amica has paid you to date --

17 MR. MURPHEY: I'm going to object, Your Honor. The
18 issue is -- as Mr. Bennett has acknowledged the issue in this
19 case is whether Amica -- strike that --

20 THE COURT: Sustained.

21 MR. MURPHEY: The issue is with respect to them
22 paying --

23 THE COURT: Don't look a gift horse in the mouth. I
24 just sustained the objection.

25 MR. MURPHEY: Thank you, Judge.

1 Q. Dr. Borden, you were given a claim card, were you
2 not, that allowed you to purchase whatever your family
3 needed, and it would be more or less a debit card?

4 A. Yes.

5 Q. And that claim card was renewed from time to time so
6 that as you needed to purchase new things you could; is that
7 right?

8 A. Yes.

9 Q. There was testimony earlier about other contractors.
10 Do you recall that? These names had been provided to you by
11 neighbors or friends of yours.

12 A. Yes.

13 Q. I believe, specifically, you referred to Laughlin
14 Brothers, Hardner, and David Haller. Do you recall that?

15 A. The names that were given to us by neighbors and
16 friends were the Laughlin Brothers and David Haller.

17 Q. You said, I believe, that there was a time after the
18 loss when you were at the scene with Mr. Schumann and you
19 talked to him about having another contractor, and he said --
20 he gave you the impression this wasn't the time for that,
21 correct?

22 A. That was while we were in the restaurant at the
23 Clarion Bel-Aire Hotel.

24 Q. So that was just a couple days after the fire?

25 A. Well, it would have to be at least three days.

1 Q. And that was because he hadn't done his estimate
2 yet, correct?

3 A. Correct.

4 Q. Did you understand that to be limited in time? To
5 tell you you didn't need a contractor that day or the next
6 day, but that there was time to do that after he prepared his
7 estimate, or did you think he meant you never needed a
8 contractor?

9 A. I knew we would need a contractor at some point, but
10 he wrote down the names and said, I will contact them at the
11 appropriate time. I had no idea what the appropriate time
12 was at that point.

13 Q. I'm going to show you what I've marked as A-6. When
14 this contract was issued. There was a letter sent to you by
15 Mr. Bennett. Now, you had had Mr. Bennett's name for a
16 while. I had previously shown you a letter from Mr. Bennett,
17 and it invited you to call him if you had questions, correct?

18 (Defendant's Exhibit A-6 marked for identification.)

19 A. Yes.

20 Q. In fact, just going back to A-5, at the end of the
21 letter Mr. Bennett had given you his phone number and said,
22 if you have any questions, you may contact me directly, and
23 he gave you his direct dial, correct?

24 A. Yes.

25 Q. Now, in this letter, A-6, you are sent a copy of

1 Mr. Schumann's estimate, correct? And you were also -- at
2 that point, you were told that it appears that Amica's
3 suggesting to you that you could consult a contractor at this
4 point in time, and that you should consider having him
5 inspect the house and consider having him review
6 Mr. Schumann's estimate. Do you agree with that?

7 A. Yes.

8 Q. Why didn't you do that at that point in time?

9 A. Because at that point I was advised to obtain the
10 services of Giordano & Associates.

11 Q. So in other words, instead of doing what Amica
12 suggested, getting one of these contractors, you had three
13 names at least, you decided to get a public adjuster,
14 correct?

15 A. Yes.

16 Q. Did you get advice from Mr. Parise that in addition
17 to having a public adjuster you should not consult a
18 contractor?

19 A. No.

20 Q. Did you understand that -- when we were talking
21 about the amount of damage to your building, did you
22 understand that Mr. Parise's company would not rebuild the
23 structure for you? That Mr. Parise was not a contractor with
24 the capacity to build?

25 A. He never represented himself in that fashion.

1 Q. So you understood, when you were dealing Mr. Parise
2 and Mr. Schumann, these were both individuals who would work
3 from computers, they would prepare estimates based on what
4 they saw and knew, but these estimates, if not tied to a
5 contractor, wouldn't necessarily guarantee you that there was
6 someone who would build at that price, correct?

7 A. Correct.

8 Q. Now, there was also earlier testimony that you had
9 some concerns about what Mr. Seifert had done regarding the
10 board-up, and you had the name of Mr. Hardner. Did you
11 consult with Mr. Hardner after that to ask him to come back
12 in and review any of the work that either Schumann or Visions
13 had done?

14 A. I didn't have major concerns with Mr. Seifert
15 regarding the board-up at all. The only concern I had was
16 that Mr. Hardner said that he would have put antifreeze in
17 the pipes. But aside from that, I had no reason to question
18 what Mr. Seifert had done at that point regarding the
19 board-up.

20 Q. I'm going to show you what's been marked as A-7.
21 You've received this document before. But this is the letter
22 Brian Seifert wrote to you, and to Mr. Schumann, and this is
23 the letter dated March 7th in which he says, among other
24 things, that he is capable of doing the work at
25 Mr. Schumann's price, but he also says there are always

1 hidden costs on areas that couldn't be seen or areas that had
2 no access. Do you recall getting that letter?

3 (Defendant's Exhibit A-7 marked for identification.)

4 A. No.

5 Q. Are you saying you don't recall or are you saying
6 you did not get it?

7 A. To be specific, as I mentioned during the
8 deposition, I believe at the deposition that was the first
9 time I saw the letter.

10 Q. Do you recall at this point in time whether you had
11 voiced to Amica -- we're talking about March, had you voiced
12 any objections or concerns about Mr. Seifert or Visions and
13 their ability to review a property estimate or anything of
14 that nature?

15 A. Mr. Parise was handling that at that point.

16 Q. So the answer is, you don't know what Mr. Parise
17 might have done?

18 A. I believe he did, but I did not specifically voice
19 that concern to Amica myself.

20 Q. I'm going to show you what I've now marked as A-8.
21 This is the letter that accompanied the first check that was
22 sent to you by Mr. Bennett, the check in the amount of
23 \$295,098.02. Obviously you had questions about this,
24 correct? You testified about the questions and concerns that
25 this letter and this check caused you, correct?

1 (Defendant's Exhibit A-8 marked for identification.)

2 A. Yes.

3 Q. Why didn't you call Mr. Bennett and ask him about
4 it?

5 A. I was acting on the advice of my brother and
6 Mr. Parise at that point.

7 Q. Did they tell you not to call?

8 A. They felt that a verbal explanation would not be
9 enough. That we needed a written clarification.

10 Q. You'll agree with me, though, that Mr. Bennett
11 again, as he did in other letters, said, "If you have any
12 questions or concerns, please let me know."?

13 A. I understand.

14 Q. It was just your choice not to call and ask
15 questions --

16 A. Yes.

17 Q. I mean, you were very concerned about this, you
18 didn't know what the check meant, but you didn't do anything
19 affirmative, you just reacted and said I won't accept this,
20 correct?

21 A. Yes.

22 Q. Did you ever see the check?

23 A. Yes.

24 Q. Did the check say anything on it about final payment
25 or final settlement of all claims or any words to that

1 effect?

2 A. Well, what the check said, my recollection is that
3 it says something about for services rendered. Now, I don't
4 understand what those words mean specifically or in a legal
5 sense. Rick had a concern about that phrase that he wanted
6 to be clarified before we would accept the check.

7 MR. GEER: I have a copy of the original check, and
8 at the bottom is the endorsement. I can put it up, but, Your
9 Honor, I think it's a little clearer if he just looks at it.
10 May I?

11 THE COURT: All right.

12 Q. This has been marked as A-4 already --

13 MR. MURPHEY: Which check is that?

14 MR. GEER: This is the \$295,000 check.

15 THE COURT: Is that A-4?

16 MR. GEER: Yes. That is A-4.

17 Q. The question is, what was the language on that check
18 that caused concern to you that caused you to reject it?

19 A. The concern was on Rick's part, but part of the
20 particular phrase was, "For a loss on 2/16/2003 or for
21 services rendered under policy number."

22 Q. That was it?

23 A. Yes.

24 Q. So you are referring to this section here, correct?

25 A. Perhaps also for the "for a loss" part, but

1 generally, yes.

2 THE COURT: How much more do you have with this
3 fellow?

4 MR. GEER: I'm guessing at least an hour. I would
5 estimate at least an hour.

6 THE COURT: We're going to break earlier today.
7 We're moving along pretty good. But we're going to start a
8 little bit earlier tomorrow morning. We'll start at 8:30
9 tomorrow morning, and we'll probably finish, for scheduling
10 purposes, around 4:00. Who else do you have after the Doctor
11 is done?

12 MR. MURPHEY: Mr. Parise, Mr. Seifert, Mr. Haller.

13 THE COURT: Anybody else?

14 MR. MURPHEY: Well, no. The reason I said it that
15 way is because we had -- I had talked about calling
16 Mr. Schumann, it doesn't look like we're going to be able to
17 do that.

18 THE COURT: Is he going to testify? Is he going to
19 be called in your case? Mr. Schumann.

20 MR. GEER: I told Craig that if he called
21 Mr. Schumann -- it was my plan not to, I couldn't guarantee
22 it, but assuming he goes through the whole scope of the
23 issues with Mr. Schumann, I was planning not to do that. If
24 he stopped short and didn't cover some of the issues, I would
25 do that. I anticipate he would be as thorough as he always

1 is.

2 MR. MURPHEY: I am attempting to be cooperative, and
3 I will -- if we can have Mr. Parise and Mr. Schumann testify
4 tomorrow, I think that would allow Mr. Schumann to go back to
5 North Carolina, or wherever he's from --

6 THE COURT: So it is your intention to call
7 Mr. Schumann as on cross-examination?

8 MR. MURPHEY: I will call him.

9 THE COURT: Then we'll probably finish your case
10 tomorrow, shouldn't you think?

11 MR. MURPHEY: Yes. I can't speak for Paul, but I
12 think they'll be much quicker than these witnesses.

13 THE COURT: What about you, Mr. Geer? What do you
14 have by way of -- you're kind of getting your case done as we
15 go along here in some form or fashion

16 MR. GEER: I expect to call Mr. Bennett back, and
17 Dan Jones, the contractor.

18 THE COURT: So those would be your two witnesses.
19 Then we're moving along pretty good. We'll finish this thing
20 up probably on Monday, I should expect, barring something
21 unforeseen. So we'll see you back at 8:30 in the morning

22 MR. GEER: Do you mind if I ask for an offer of
23 proof on Mr. Haller? I have some objections --

24 THE COURT: On who?

25 MR. GEER: Mr. Haller. David Haller the contractor.

1 THE COURT: Come on into my chambers.

2 MR. GEER: I may call Amy Borden, too. Craig just
3 told me he's not going to call Amy Borden, so I may call her.

4 THE COURT: What does she have to say that would be
5 pertinent to this? Do you know?

6 MR. GEER: I think it depends on what we elicit from
7 Mr. Schumann.

8 THE COURT: Anyway, we're here on an offer of proof
9 for Mr. Haller.

10 MR. MURPHEY: Mr. Haller estimated the loss. The
11 issue in this case, in the first instance, is the
12 reasonableness of Mr. Schumann's estimate. Mr. Haller saw
13 the house three months later, and estimated it at twice as
14 much as Schumann's estimate. It's pretty clear to me that
15 that's relevant evidence.

16 MR. GEER: I think it's relevant. Did you disclose
17 Mr. Haller as your expert? Your Rule 26 disclosure?

18 MR. MURPHEY: I identified him as an expert.

19 MR. GEER: As an expert or as a witness?

20 MR. MURPHEY: He was identified as an expert, I
21 know, in the pretrial.

22 MR. GEER: I know he was in the pretrial. Here's my
23 concern, Your Honor: He was never made -- this is a bad
24 faith case. So the real question is what did Amica know,
25 what was presented to Amica that they should've considered,

1 didn't consider, did they disregard this evidence. I think
2 that's the heart of the case that the Court's been getting
3 to --

4 THE COURT: How reasonable or unreasonable was it
5 for them -- really, as much as dollars and cents it's -- it's
6 as much a scope of the work case as anything else. I suspect
7 that if there had been an agreement on scope of the work we
8 wouldn't be here today.

9 MR. MURPHEY: Ultimately they agreed on scope of the
10 work, didn't agree on the ultimate price, but they settled
11 the case.

12 THE COURT: In any event, your point is?

13 MR. GEER: My point is, I even took Mr. Haller's
14 deposition. I didn't know he was going to be called as an
15 expert to say it was unreasonable -- that Schumann's estimate
16 or anybody else's estimate was unreasonable. I took
17 Mr. Haller's deposition simply because I had some
18 subcontractor's estimates directed to him, and didn't really
19 have any knowledge at that point in time what his involvement
20 was. And then, when I took his deposition, I happened to ask
21 a question: Did you ever do an estimate? And that was the
22 first time I ever received it.

23 THE COURT: Were there any expert reports that were
24 filed in connection with this case?

25 MR. MURPHEY: We filed them with our pretrial

1 narrative. And what I did in the pretrial narrative is, I
2 identified Dave Haller and said his deposition had been
3 taken, and one was his expert report -- I'm sorry, his
4 estimate.

5 THE COURT: How are you surprised by -- you deposed
6 him, you have his report. Maybe the problem is mine, I'm not
7 seeing it clearly, but I'm not sure what your concern is.

8 MR. GEER: It's just this, Your Honor: He is not a
9 fire restoration contractor, and I know I can cover that on
10 cross, but I had no idea, when I took his deposition, that he
11 was going to be a witness that was going to be used by
12 Mr. Murphey to say that my estimates were unreasonable. He
13 merely did an estimate for \$700,000 on the house, and I was
14 interested at that point because I had never seen that
15 estimate before. But not that he was going to be used as an
16 expert witness, that he was going to be used in the --

17 THE COURT: Who's the other fellow that came
18 in with -- the name is escaping me --

19 MR. MURPHEY: Dan Jones?

20 THE COURT: Yes. What was his estimate? That was
21 your guy you got.

22 MR. GEER: He was our guy. He was the 553 guy.

23 THE COURT: And then Parise was higher than that.
24 But is Parise going to testify -- is Parise going to weigh in
25 on the issue of why it was necessary to knock the walls down?

1 MR. MURPHEY: Sure. Yeah. I mean, that's the point
2 of his testimony

3 THE COURT: And, presumably, you'll have some
4 testimony, either from Mr. Schumann or somebody else, as to
5 why it was reasonable not to knock the walls down, right?

6 MR. GEER: That's correct. I guess my objection to
7 Mr. Haller is just that I had no reason to ask him those
8 questions. I think I asked him one question: Do you have
9 any fire restoration experience? I think he said, no. And I
10 went on.

11 THE COURT: It seems to me you failed to ask him at
12 your own risk. I'll see how it goes tomorrow. It's a
13 nonjury trial, so I have a certain degree of latitude. Once
14 the cat gets out of the bag with the jury, it's sometimes
15 somewhat different. But to cut to the chase, I presume
16 Haller gets up, give him the estimate, is this yours, is this
17 what you considered reasonable to redo the house?

18 MR. MURPHEY: To put it back in its prefire
19 condition, absolutely.

20 THE COURT: Well, isn't that essentially what
21 happened at deposition anyway? I mean, was that essentially
22 what happened there?

23 MR. GEER: Yes. I guess I don't -- if he goes that
24 far, I knew that much. I guess the question is the next
25 step, and I anticipate Craig will take it to the next step,

1 which will say whether it's reasonable or not to think that
2 what we call the clean, seal, paint approach was
3 unreasonable. Is that what you're going to do?

4 MR. MURPHEY: Yes. I'm going to say, is this what
5 was necessary to bring it back to its prefire condition.
6 Yes. Could you have painted it and sealed it. No. Why.
7 These are the reasons. I mean, he's a contractor, you know,
8 too. I mean, Parise is a public adjuster, just like Schumann
9 is.

10 THE COURT: As far as all that goes, so far from
11 what I hear I don't see any particular surprise or prejudice.
12 You're going to have an opportunity to cross-examine him if
13 you want till the cows come home, and you'll wheel in your
14 people. I take it, though, that it -- that it would be
15 Amica's position, through some of these witnesses that
16 testify, that in fire losses like this it is not unusual to
17 forego knocking the walls down and patching and sealing in
18 lieu of knocking the walls down? Is that essentially right?

19 MR. GEER: I think that's pretty concise, Your
20 Honor.

21 THE COURT: We'll go off the record here.
22 (Discussion held off the record.)

23 THE COURT: The parties informed me -- actually, to
24 be more accurate, Mr. Murphey called to inform me prior to
25 the commencement of trial that David Haller would be called

1 as a witness in the case, which I was unaware of at the time.
2 Mr. Murphey also informed me that he had spoken with Mr. Geer
3 about it, and advised him, if I got this correctly, that
4 Mr. Haller had advised you that he and I have a partnership
5 or business relationship along with another individual, and
6 would that present any particular problem. I'm informed that
7 it did not present a problem for Mr. Geer, nor your client;
8 is that right?

9 MR. GEER: That's correct.

10 THE COURT: And nor does it present a problem for
11 you. I've considered the matter, and if anybody had an
12 objection, I would certainly have acted on it. I don't
13 consider it problematic, and I'm certain I can decide the
14 case fairly.

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16 (Adjourned at 4:13 p.m.)
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C E R T I F I C A T I O N

I, Sondra A. Black, a Court Reporter and Notary
Public in and for the Commonwealth of Pennsylvania, do
hereby certify that the foregoing is a true and accurate
transcript of my stenographic notes in the
above-captioned matter.

Sondra A. Black

Dated: January 12, 2006